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CROSS REFERENCES

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CHAPTER 1—LABOR STATISTICS

SUBCHAPTER I—BUREAU OF LABOR STATISTICS

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SUBCHAPTER I—BUREAU OF LABOR STATISTICS

§ 1. Design and duties of bureau generally

The general design and duties of the Bureau of Labor Statistics shall be to acquire and diffuse among the people of the United States useful information on subjects connected with labor, in the most general and comprehensive sense of that word, and especially upon its relation to capital, the hours of labor, the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity.

(June 13, 1888, ch. 389, § 1, 25 Stat. 182; Feb. 14, 1903, ch. 552, § 4, 32 Stat. 826; Mar. 18, 1904, ch. 716, 33 Stat. 136; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.)

CODIFICATION

Act June 27, 1884, created a Bureau of Labor in the Department of the Interior.

Section 1 of act June 13, 1888, created a Department of Labor and outlined its general design and duties, and section 9 of that act transferred the Bureau of Labor to the Department of Labor.

Act Feb. 14, 1903, placed the Department of Labor under the jurisdiction and made it a part of the Department of Commerce and Labor.

Act Mar. 18, 1904, changed the name of the Department of Labor to the Bureau of Labor in the Department of Commerce and Labor.

Act Mar. 4, 1913, created the Department of Labor and transferred the Bureau of Labor from the Department of Commerce and Labor to the newly created Department of Labor, redesignating such transferred Bureau as the Bureau of Labor Statistics.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2. Collection, collation, and reports of labor statistics

The Bureau of Labor Statistics, under the direction of the Secretary of Labor, shall collect, collate, and report at least once each year, or oftener if necessary, full and complete statistics of the conditions of labor and the products and distribution of the products of the same, and to this end said Secretary shall have power to

employ any or either of the bureaus provided for his department and to rearrange such statistical work, and to distribute or consolidate the same as may be deemed desirable in the public interests; and said Secretary shall also have authority to call upon other departments of the Government for statistical data and results obtained by them; and said Secretary of Labor may collate, arrange, and publish such statistical information so obtained in such manner as to him may seem wise.

The Bureau of Labor Statistics shall also collect, collate, report, and publish at least once each month full and complete statistics of the volume of and changes in employment, as indicated by the number of persons employed, the total wages paid, and the total hours of employment, in the service of the Federal Government, the States and political subdivisions thereof, and in the following industries and their principal branches: (1) Manufacturing; (2) mining, quarrying, and crude petroleum production; (3) building construction; (4) agriculture and lumbering; (5) transportation, communication, and other public utilities; (6) the retail and wholesale trades; and such other industries as the Secretary of Labor may deem it in the public interest to include. Such statistics shall be reported for all such industries and their principal branches throughout the United States and also by States and/or Federal reserve districts and by such smaller geographical subdivisions as the said Secretary may from time to time prescribe. The said Secretary is authorized to arrange with any Federal, State, or municipal bureau or other governmental agency for the collection of such statistics in such manner as he may deem satisfactory, and may assign special agents of the Department of Labor to any such bureau or agency to assist in such collection.

(Mar. 4, 1913, ch. 141, § 4, 37 Stat. 737; July 7, 1930, ch. 873, 46 Stat. 1019.)

AMENDMENTS

1930—Act July 7, 1930, added second paragraph.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRISON STATISTICS REPORT

Joint Res. June 17, 1940, ch. 389, 54 Stat. 401, authorized the Bureau of Labor Statistics to furnish a report to Congress before May 1, 1941, on the kind, amount, and value of all goods produced in state and federal prisons.

CROSS REFERENCES

Transfer of duties as to ascertaining cost of production in foreign countries, etc., see Codification note under section 4 of this title.

§ 2a. Omitted

CODIFICATION

Section, act Feb. 24, 1927, ch. 189, title IV, 44 Stat. 1222, which related to the collection of statistical reports through local special agents, was from an appropriations act for the Departments of State, Justice, the Judiciary, and Departments of Commerce and Labor for the fiscal year ending June 30, 1928, and was not repeated in subsequent appropriation acts.

§ 2b. Studies of productivity and labor costs in industries

The Bureau of Labor Statistics of the United States Department of Labor is authorized and directed to make continuing studies of productivity and labor costs in the manufacturing, mining, transportation, distribution, and other industries.

(June 7, 1940, ch. 267, 54 Stat. 249; Aug. 30, 1954, ch. 1076, § 1(27), 68 Stat. 968.)

CODIFICATION

Provision authorizing appropriations of up to $100,000 for studies by the bureau in the first fiscal year was omitted as executed.

AMENDMENTS

1954—Act Aug. 30, 1954, repealed second paragraph which required the Secretary of Labor to submit annually to Congress reports of findings under this section.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3. Commissioner; appointment and tenure of office; compensation

The Bureau of Labor Statistics shall be under the charge of a Commissioner of Labor Statistics, who shall be appointed by the President, by and with the advice and consent of the Senate; he shall hold his office for four years, unless sooner removed, and shall receive a salary.

(June 27, 1884, ch. 127, 23 Stat. 60; June 13, 1888, ch. 389, § 2, 25 Stat. 182; Mar. 18, 1904, ch. 716, 33 Stat. 136; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.)

CODIFICATION

Act June 13, 1888, raised salary from $3,000 to $5,000 per annum.

Act Mar. 18, 1904, changed the name of the Department of Labor to Bureau of Labor.

Act Mar. 4, 1913, authorized the substitution of "Commissioner of Labor Statistics" and "Bureau of Labor Statistics" for "Commissioner of Labor" and "Bureau of Labor", respectively.

Words "of five thousand dollars per annum" at end of section were omitted as superseded by the Classification Acts. See section 5101 et seq. and section 5331 et seq. of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4. Duties of Commissioner in general

It shall be the duty of the Commissioner of Labor Statistics to ascertain the effect of the customs laws, and the effect thereon of the

state of the currency, in the United States, on the agricultural industry, especially as to its effect on mortgage indebtedness of farmers. He shall also establish a system of reports by which, at intervals of not less than two years, he can report the general condition, so far as production is concerned, of the leading industries of the country. He is also specially charged to investigate the causes of, and facts relating to, all controversies and disputes between employers and employees as they may occur, and which may tend to interfere with the welfare of the people of the different States. He shall also obtain such information upon the various subjects committed to him as he may deem desirable from different foreign nations, and what, if any, convict-made goods are imported into this country, and if so from whence.

(June 13, 1888, ch. 389, § 7, 25 Stat. 183; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; May 29, 1928, ch. 901, § 1 (110), (111), 45 Stat. 994.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to Title 19, Customs Duties.

CODIFICATION

Section is from act June 13, 1888. Act June 13, 1888, also contained other provisions relating to duties of former Commissioner of Labor to ascertain cost of producing, in leading countries, articles dutiable in United States, comparative cost of living, etc., which have been omitted from this section because of act Aug. 23, 1912, transferring those duties to Bureau of Foreign and Domestic Commerce.

Act Aug. 23, 1912, transferred the duty of former Commissioner of Labor to ascertain the cost of producing, in leading countries, articles dutiable in the United States, the profits of the manufacturers and producers of such articles, the comparative cost of such articles, comparative cost of living in such countries, what articles are controlled by trusts and the effect they have on prices and production, to the Bureau of Foreign and Domestic Commerce. Text of said act is set out as section 172 of Title 15, Commerce and Trade.

Act Mar. 4, 1913, authorized the substitution of "Commissioner of Labor Statistics" for "Commissioner of Labor".

AMENDMENTS

1928—Act May 29, 1928, repealed provisions of this section requiring reports to Congress on the investigations required by this section, and is authority for the omission of words "and report as to" following "ascertain" in first sentence and "and report thereon to Congress" at end of third sentence relating to information from foreign nations, and convict made goods.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5. Bulletin as to labor conditions

The Commissioner of Labor Statistics is authorized to prepare and publish a bulletin of the Bureau of Labor Statistics, as to the condition of labor in this and other countries, condensations of State and foreign labor reports, facts as to conditions of employment, and such other facts as may be deemed of value to the industrial interests of the country.

(Mar. 2, 1895, ch. 177, § 1, 28 Stat. 805; Mar. 18, 1904, ch. 716, 33 Stat. 136; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.)

CODIFICATION

Provision of act Mar. 2, 1895, as to printing of the bulletin for distribution is covered by section 1324 of Title 44, Public Printing and Documents.

Act Mar. 18, 1904, changed the name of the Department of Labor to Bureau of Labor.

Act Mar. 4, 1913, authorized the substitution of "Commissioner of Labor Statistics" and "Bureau of Labor Statistics" for "Commissioner of Labor" and "Bureau of Labor", respectively.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

STATISTICS OF CITIES

The Commissioner was authorized to compile, as part of the bulletin of the Department, an abstract of the main features of the official statistics of cities having over 30,000 population, by a provision of act July 1, 1898, ch. 546, § 1, 30 Stat. 648.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 44 section 1324.

§ 6. Annual and special reports to President and Congress

The Commissioner of Labor Statistics shall annually make a report in writing to the President and Congress, of the information collected and collated by him, and containing such recommendations as he may deem calculated to promote the efficiency of the department. He is also authorized to make special reports on particular subjects whenever required to do so by the President or either House of Congress, or when he shall think the subjects in his charge require it. He shall, on or before the 15th day of March in each year, make a report in detail to Congress of all moneys expended under his direction during the preceding fiscal year.

(June 13, 1888, ch. 389, § 8, 25 Stat. 183; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; Apr. 21, 1976, Pub. L. 94-273, § 5(3), 90 Stat. 377.)

CODIFICATION

Act Mar. 4, 1913 authorized the substitution of "Commissioner of Labor Statistics" for "Commissioner of Labor".

AMENDMENTS

1976—Pub. L. 94-273 substituted "March" for "December".

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Congressional Record, bound copy to the Department of Labor, see section 906 of Title 44, Public Printing and Documents.

Printing of reports, see section 1325 of Title 44.

§ 7. Reports of labor statistics in Hawaii

It shall be the duty of the United States Commissioner of Labor Statistics to collect, assort, arrange, and present in reports every five years statistical details relating to all departments of labor in the Territory of Hawaii, especially in relation to the commercial, industrial, social, educational, and sanitary condition of the laboring classes, and to all such other subjects as Congress may by law direct. The said commissioner is especially charged to ascertain the highest, lowest, and average number of employees engaged in the various industries in the Territory, to be classified as to nativity, sex, hours of labor, and conditions of employment, and to report the same to Congress.

(Apr. 30, 1900, ch. 339, § 76, 31 Stat. 155; Apr. 8, 1904, ch. 948, 33 Stat. 164; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.)

CODIFICATION

First paragraph of act Apr. 30, 1900, § 76, relating to superintendent of public instruction, constituted section 541 of Title 48, Territories and Insular Possessions.

Act Apr. 8, 1904, changed "annual reports" to read "reports in nineteen hundred and five, and every five years thereafter," which words have been codified as "reports every five years" in first sentence. In second sentence said act omitted "at as early a date as possible and as often thereafter as such information may be required," following "ascertain".

Act Mar. 4, 1913, is authority for substitution of "Commissioner of Labor Statistics" for "Commissioner of Labor."

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 8. Unemployment data relating to Americans of Spanish origin or descent

The Department of Labor, in cooperation with the Department of Commerce, shall develop methods for improving and expanding the collection, analysis, and publication of unemployment data relating to Americans of Spanish origin or descent.

(Pub. L. 94-311, § 1, June 16, 1976, 90 Stat. 688.)

SUBCHAPTER II—SPECIAL STATISTICS

§ 9. Authorization of special studies, compilations, and transcripts on request; cost

The Department of Labor is authorized, within the discretion of the Secretary of Labor, upon the written request of any person, to make special statistical studies relating to employment, hours of work, wages, and other conditions of employment; to prepare from its records special statistical compilations; and to furnish transcripts of its studies, tables, and other records, upon the payment of the actual cost of such work by the person requesting it.

(Apr. 13, 1934, ch. 118, § 1, 48 Stat. 582; Apr. 11, 1935, ch. 59, 49 Stat. 154; June 15, 1937, ch. 349, 50 Stat. 259; Apr. 15, 1939, ch. 71, 53 Stat. 581.)

CODIFICATION

This section and sections 9a and 9b of this title comprised sections 1 to 3 of act Apr. 13, 1934. Section 4 of that act provided as follows: "This Act shall cease to be effective one year after the date of its enactment." The act was temporarily extended by acts Apr. 11, 1935, and June 15, 1937, and was made permanent by act Apr. 15, 1939.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9b of this title.

§ 9a. Credit of receipts

All moneys hereinafter[1] received by the Department of Labor in payment of the cost of such work shall be deposited to the credit of the appropriation of that bureau, service, office, division, or other agency of the Department of Labor which supervised such work, and may be used, in the discretion of the Secretary of Labor, and notwithstanding any other provision of law, for the ordinary expenses of such agency and/or to secure the special services of persons who are neither officers nor employees of the United States.

(Apr. 13, 1934, ch. 118, § 2, 48 Stat. 582; Apr. 11, 1935, ch. 59, 49 Stat. 154; June 15, 1937, ch. 349, 50 Stat. 259; Apr. 15, 1939, ch. 71, 53 Stat. 581.)

CODIFICATION

This section and sections 9 and 9b of this title comprised sections 1 to 3 of act Apr. 13, 1934, which were to terminate one year after Apr. 13, 1934, pursuant to section 4 of act Apr. 13, 1934, set out as a Codification note under section 9 of this title. Such sections were temporarily extended by acts Apr. 11, 1935, and June 15, 1937, and were made permanent by act Apr. 15, 1939.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9b, 216 of this title.

§ 9b. Rules and regulations

The Secretary of Labor shall prescribe rules and regulations for the enforcement of sections 9 and 9a of this title.

(Apr. 13, 1934, ch. 118, § 3, 48 Stat. 583; Apr. 11, 1935, ch. 59, 49 Stat. 154; June 15, 1937, ch. 349, 50 Stat. 259; Apr. 15, 1939, ch. 71, 53 Stat. 581; Aug. 7, 1946, ch. 770, § 1(16), 60 Stat. 867.)

CODIFICATION

This section and sections 9 and 9a of this title comprised sections 1 to 3 of act Apr. 13, 1934, which were to terminate one year after Apr. 13, 1934, pursuant to section 4 of act Apr. 13, 1934, set out as a Codification note under section 9 of this title. Such sections were temporarily extended by acts Apr. 11, 1935, and June 15, 1937, and were made permanent by act Apr. 15, 1939.

AMENDMENTS

1946—Act Aug. 7, 1946, repealed the provisions requiring the Secretary of the Interior to make annual reports to Congress.

[1] So in original. Probably should read "hereafter".

CHAPTER 2—WOMEN'S BUREAU

Sec.
11. Bureau established.
12. Director of bureau; appointment; basic compensation.
13. Powers and duties of bureau.
14. Assistant director of bureau; appointment; basic compensation; duties.
15, 16. Repealed.

§ 11. Bureau established

There shall be established in the Department of Labor a bureau to be known as the Women's Bureau.

(June 5, 1920, ch. 248, § 1, 41 Stat. 987.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 12. Director of bureau; appointment; basic compensation

The Women's Bureau shall be in charge of a director, a woman, to be appointed by the President, by and with the advice and consent of the Senate, who shall receive an annual compensation.

(June 5, 1920, ch. 248, § 2, 41 Stat. 987.)

CODIFICATION

Part of section 2 of act June 5, 1920, constitutes section 13 of this title.

Words "of $5,000" at end of this section were omitted in view of the Classification Act. See section 5101 et seq. and section 5331 et seq. of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Federal employees' pay increases, see section 5541 et seq. of Title 5, Government Organization and Employees.

§ 13. Powers and duties of bureau

It shall be the duty of the Women's Bureau to formulate standards and policies which shall promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment. The said bureau shall have authority to investigate and report to the Department of Labor upon all matters pertaining to the welfare of women in industry. The director of said bureau may from time to time publish the results of these investigations in such a manner and to such extent as the Secretary of Labor may prescribe.

(June 5, 1920, ch. 248, § 2, 41 Stat. 987.)

CODIFICATION

Part of section 2 of act June 5, 1920, constitutes section 12 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 14. Assistant director of bureau; appointment; basic compensation; duties

There shall be in the Women's Bureau an assistant director, to be appointed by the Secretary of Labor, who shall receive an annual compensation and shall perform such duties as shall be prescribed by the director and approved by the Secretary of Labor.

(June 5, 1920, ch. 248, § 3, 41 Stat. 987.)

CODIFICATION

Words "of $3,500" following "compensation" were omitted in view of the Classification Act. See section 5101 et seq. and section 5331 et seq. of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 15. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 644

Section, act June 5, 1920, ch. 248, § 4, 41 Stat. 987, authorized the employment by the Woman's Bureau of the Department of Labor of such employees at such rates of compensation as Congress may provide by appropriation.

§ 16. Repealed. Oct. 31, 1951, ch. 654, § 1(54), 65 Stat. 703

Section, act June 5, 1920, ch. 248, § 5, 41 Stat. 987, related to quarters for bureau.

CHAPTER 2A—CHILDREN'S BUREAU

§§ 18 to 18c. Transferred

CODIFICATION

Section 18, acts Apr. 9, 1912, ch. 73, § 1, 37 Stat. 79; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737, established a Children's Bureau in the Department of Labor, see, now section 191 of Title 42, The Public Health and Welfare.

Section 18a, acts Apr. 9, 1912, ch. 73, § 2, 37 Stat. 79; Mar. 4, 1913, ch. 141, §§ 3, 6, 37 Stat. 737, 738; Feb. 27, 1925, ch. 364, Title IV, 43 Stat. 1050, created the office of chief of the Children's Bureau, and enumerated the powers and duties of said Bureau, see, now, section 192 of Title 42.

Section 18b, acts Apr. 9, 1912, ch. 73, § 3, 37 Stat. 80; Mar. 4, 1913, ch. 141, §§ 3, 6, 37 Stat. 737, 738, created the office of Assistant Chief of the Children's Bureau, see, now, section 193 of Title 42.

Section 18c, acts Apr. 9, 1912, ch. 73, § 4, 37 Stat. 80; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737, related to quarters for the Children's Bureau, see, now, section 194 of Title 42.

CHAPTER 3—NATIONAL TRADE UNIONS

§§ 21 to 25. Repealed. July 22, 1932, ch. 524, 47 Stat. 741

Section 21, act June 29, 1886, ch. 567, § 1, 24 Stat. 86, defined a National Trade Union for purposes of this chapter.

Section 22, act June 29, 1886, ch. 567, § 2, 24 Stat. 86, related to the rights of a National Trade Union upon incorporation in the office of the recorder of the District of Columbia.

Section 23, act June 29, 1886, ch. 567, § 3, 24 Stat. 86, related to the power of an incorporated National Trade Union to establish and amend its own constitution, rules, and by-laws.

Section 24, act June 29, 1886, ch. 567, § 4, 24 Stat. 86, related to the power of an incorporated National Trade Union to establish and grant powers to its own officers.

Section 25, act June 29, 1886, ch. 567, § 5, 24 Stat. 86, related to the establishment of a headquarters of a National Trade Union in the District of Columbia.

CHAPTER 4—VOCATIONAL REHABILITATION OF PERSONS INJURED IN INDUSTRY

§§ 31 to 41c. Repealed. Pub. L. 93–112, title V, § 500(a), Sept. 26, 1973, 87 Stat. 390

Section 31, acts June 2, 1920, ch. 219, § 1, 41 Stat. 735; June 5, 1924, ch. 265, 43 Stat. 431; June 9, 1930, ch. 414, § 1, 46 Stat. 524; June 30, 1932, ch. 324, § 1, 47 Stat. 448; July 6, 1943, ch. 190, § 1, 57 Stat. 374; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 652; Nov. 8, 1965, Pub. L. 89–333, § 2(a), 79 Stat. 1282; Oct. 3, 1967, Pub. L. 90–99, § 2, 81 Stat. 250; July 7, 1968, Pub. L. 90–391, §§ 2, 7(c), 82 Stat. 298, 300; Dec. 31, 1970, Pub. L. 91–610, § 1, 84 Stat. 1817, related to grants to assist in rehabilitating handicapped individuals, providing in subsec. (a) authorization to make grants and a statement of purpose and in subsec. (b) authorization of appropriations.

Section 32, acts June 2, 1920, ch. 219, § 2, 41 Stat. 735; July 6, 1943, ch. 190, § 1, 57 Stat. 374; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 652; Nov. 8, 1965, Pub. L. 89–333, § 2(a), 79 Stat. 1282; July 7, 1968, Pub. L. 90–391, §§ 3, 4, 5, 82 Stat. 298, related to grants to States for vocational rehabilitation services, providing in: subsec. (a) for computation of allotments; subsec. (b) for amount of payments and adjusted Federal shares; and subsec. (c) for private contributions for construction or establishment of facilities.

Section 33, acts June 2, 1920, ch. 219, § 3, 41 Stat. 736; June 5, 1924, ch. 265, 43 Stat. 431; June 9, 1930, ch. 414, § 2, 46 Stat. 524; June 30, 1932, ch. 324, § 2, 47 Stat. 449; July 6, 1943, ch. 190, § 1, 57 Stat. 376; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 654; Nov. 8, 1965, Pub. L. 89–333, § 2(a), 79 Stat. 1283; July 7, 1968, Pub. L. 90–391, § 6, 82 Stat. 299, related to grants for innovation of vocational rehabilitation services, providing in: subsec. (a) for the basis of allotments; subsec. (b) for duration of payments; subsec. (c) for restriction on payments; and subsec. (d) for additional amounts.

Section 34, acts June 2, 1920, ch. 219, § 4, 41 Stat. 736; June 9, 1930, ch. 414, § 3, 46 Stat. 525; July 6, 1943, ch. 190, § 1, 57 Stat. 377; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 655; Aug. 3, 1956, ch. 903, 70 Stat. 956; Aug. 28, 1957, Pub. L. 85–198, § 1, 71 Stat. 473; Aug. 28, 1957, Pub. L. 85–213, 71 Stat. 488; Nov. 8, 1965, Pub. L. 89–333, §§ 4(a), 5(a), 12(a), (b)(1), (2), 79 Stat. 1289, 1290, 1293; Oct. 3, 1967, Pub. L. 90–99, § 3, 81 Stat. 251; July 7, 1968, Pub. L. 90–391, § 7(a), (b), (d), 82 Stat. 299, 300; Dec. 31, 1970, Pub. L. 91–610, § 2, 84 Stat. 1817, related to grants for special projects, providing in: subsec. (a) general provisions; subsec. (b) for payments; and subsec. (c) for National Advisory Council on Vocational Rehabilitation.

Section 35, acts June 2, 1920, ch. 219, § 5, 41 Stat. 736; June 30, 1932, ch. 324, § 3, 47 Stat. 450; July 6, 1943, ch. 190, § 1, 57 Stat. 377; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 656; Nov. 8, 1965, Pub. L. 89–333, §§ 8(a), 12(b)(1), 79 Stat. 1291, 1293; Oct. 3, 1967, Pub. L. 90–99, § 6, 81 Stat. 253; July 7, 1968, Pub. L. 90–391, § 8, 82 Stat. 300, related to State plans, providing in: subsec. (a) for requirements for approval; subsec. (b) for approval; subsec. (c) for withholding or limitation of payments; and subsec. (d) for judicial review.

Section 36, acts June 2, 1920, ch. 219, § 6, 41 Stat. 737; June 5, 1924, ch. 265, 43 Stat. 432; June 9, 1930, ch. 414, § 4, 46 Stat. 526; June 30, 1932, ch. 324, § 4, 47 Stat. 450; July 6, 1943, ch. 190, § 1, 57 Stat. 378; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 658, related to method of computing and making payments.

Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 644, repealed section 36 of this title, insofar as section 36 authorized an appropriation to finance the operation of the Federal Board for Vocational Education, and insofar as it provided for certain salary restrictions.

Section 37, acts June 2, 1920, ch. 219, § 7, 41 Stat. 737; July 6, 1943, ch. 190, § 1, 57 Stat. 378; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 658; Aug. 28, 1957, Pub. L. 85–198, § 2, 71 Stat. 474; Nov. 8, 1965, Pub. L. 89–333, §§ 5(b), 7, 12(b)(1), 79 Stat. 1290, 1291, 1293; July 7, 1968, Pub. L. 90–391, § 9, 82 Stat. 301, related to administration, providing in: subsec. (a) general provisions; subsec. (b) for rules and regulations; subsec. (c) for research and dissemination of information; subsec. (d) for authorization of appropriations; and subsec. (e) for evaluation of vocational rehabilitation program.

Section 38, act June 2, 1920, ch. 219, § 8, as added July 6, 1943, ch. 190, § 1, 57 Stat. 379, and amended Aug. 3, 1954, ch. 655, § 2, 68 Stat. 659; Nov. 8, 1965, Pub. L. 89–333, § 12(b)(3), 79 Stat. 1293, related to promotion of employment opportunities.

Section 39, act June 2, 1920, ch. 219, § 9, as added July 6, 1943, ch. 190, § 1, 57 Stat. 379, and amended Aug. 3, 1954, ch. 655, § 2, 68 Stat. 659, related to annual reports to Congress.

Section 40, act June 2, 1920, ch. 219, § 10, as added July 6, 1943, ch. 190, § 1, 57 Stat. 379, and amended Aug. 3, 1954, ch. 655, § 2, 68 Stat. 659, related to appropriations for administration.

Section 41, act June 2, 1920, ch. 219, § 11, as added July 6, 1943, ch. 190, § 1, 57 Stat. 379, and amended Aug. 3, 1954, ch. 655, § 2, 68 Stat. 659; Aug. 1, 1956, ch. 852, § 16, 70 Stat. 910; June 25, 1959, Pub. L. 86–70, § 24, 73 Stat. 147; July 12, 1960, Pub. L. 86–624, § 20, 74 Stat. 416; Nov. 8, 1965, Pub. L. 89–333, §§ 6(a), 9, 10(a), 11, 12(b)(1), (c), (d), 13, 79 Stat. 1291–1294, Oct. 3, 1967, Pub. L. 90–99, § 7, 81 Stat. 253; July 7, 1968, Pub. L. 90–391, § 10, 82 Stat. 301, related to definitions.

Section 41a, act June 2, 1920, ch. 219, § 12, as added Nov. 8, 1965, Pub. L. 89–333, § 3, 79 Stat. 1284, and amended July 7, 1968, Pub. L. 90–391, § 11, 82 Stat. 303; Dec. 31, 1970, Pub. L. 91–610, § 3, 84 Stat. 1817, related to grants for construction and staffing of rehabilitation facilities, providing in: subsec. (a) for authorization to make grants; subsec. (b) for project requirements, assurances, plans and specifications, and labor standards; subsec. (c) for percentage shares; subsec. (d) for reservation of grant funds, payment, and additional payments; subsec. (e) for recovery of Federal share upon cessation of public or non-profit character of rehabilitation facilities; subsec. (f) for grants for staffing facilities with professional or technical personnel and limitation on Federal share; subsec. (g) for planning grants; subsec. (h) for adjustments for overpayments or underpayments; subsec. (i) for authorization of appropriations; and subsec. (j) for definitions of "construction", "cost" of construction, and what a project for construction of a rehabilitation facility which is primarily a workshop, may include.

Section 41b, act June 2, 1920, ch. 219, § 13, as added Nov. 8, 1965, Pub. L. 89–333, § 3, 79 Stat. 1286, and amended July 7, 1968, Pub. L. 90–391, § 12, 82 Stat. 303; Dec. 31, 1970, Pub. L. 91–610, § 4, 84 Stat. 1817, related to rehabilitation facility improvement, providing in: subsec. (a) for grants for projects for training services, authorization, definition of training services, allowances, and payments; subsec. (b) for rehabilitation facility improvement grants; authorization, improvement of service capability, and payments; subsec. (c) for technical assistance to rehabilitation facilities,

and compensation of experts and consultants; subsec. (d) for National Policy and Performance Council, its establishment, membership, function, and compensation of members; subsec. (e) for labor standards; and subsec. (f) for authorization of appropriations.

Section 41c, act June 2, 1920, ch. 219, § 14, as added Nov. 8, 1965, Pub. L. 89-333, § 3, 79 Stat. 1288, related to waiver in the case of locally financed activity of requirement that plan be statewide.

Sections 31 to 41c, referred to above, and sections 42-1 to 42b of this title, were known as the Vocational Rehabilitation Act. Section 500(a) of Pub. L. 93-112, which repealed that Act, also provided that references to such Vocational Rehabilitation Act in any other provision of law shall, ninety days after Sept. 26, 1973, be deemed to be references to the Rehabilitation Act of 1973, which is classified generally to chapter 15 (§ 701 et seq.) of this title. See section 790 of this title.

Such former provisions are now covered by various sections as follows:

Former sections	*Present sections*
31(a)	701(1), 720(a)
31(b)(1), (2)	720(b)(1), (2)
31(b)(3)(A)	761(a), 774(a)
31(b)(3)(B)	720(b)(2)
31(b)(3)(C), (D)	774(a)(1)
31(b)(4)	See 720(b), 761(a), 774(a)
32(a)	730(a)
32(b)	731(a)
32(c)	724
33(a)(1)	740(a)(1)
33(a)(2)	741(a)
33(b)	741(b)
33(c)	709
33(d)	740(b)
34(a)	762(a), (b), 763, 774(b), 776(h)
34(a)(1)	762(a), (b)
34(a)(2)(A)	741(a), (b)
34(a)(2)(B)	774(d)
34(a)(2)(C)	763(b), 774(b)
34(a)(2)(D)	723(a)(7)
34(b)	741(c)
34(c)	Repealed
35(a)	721(a)
35(a), (1), (2)	721(a)(1), (2)
35(a)(3)	721(a)(3), (4)
35(a)(4)	721(a)(5)(A)(i)
35(a)(5), (6)	721(a)(5), (6)
35(a)(7)	723(a)(1), (2)
35(a)(8), (9)	721(a)(10), (11)
35(a)(10)	721(a)(11), (12)
35(a)(11)	721(a)(13)(A)
35(a)(12), (13)	721(a)(14), (15)
35(a)(14)	721(a)(17)
35(b)-(d)	721(b)-(d)
36	731(b)
37(a), (b)	780(a), (b)
37(c)(1)	780(c)
37(c)(2)	785(a)(5)
37(d)	See 780(d)
37(e)	783
38	See 791, 791(f)(1)
39	784
40	780(d)
41(a)(1)	706(14), 723(a)(1)
41(a)(1)(A)-(C)	723(a)(1)-(3)
41(a)(1)(D), (E)	723(a)(6), (7)
41(a)(2)	723(b)
41(a)(2)(A)(i)-(iv)	723(a)(4)(A)-(D)
41(a)(2)(B)	723(a)(5)
41(a)(2)(C)	723(a)(9)
41(a)(2)(D), (E)	723(b)(1), (2)
41(a)(2)(F)	723(a)(10)
41(a)(2)(G)	723(a)
41(a)(2)(H)	723(a)(3)
41(b)	706(4)(G), (6)
41(c)	706(10)
41(d)	See 706(L)
41(e)	706(8)
41(f)	706(3)
41(g)	706(13)
41(h)	707(a)
41(i)	706(5)
41(j)	707(b)
41(k)	706(11)
41(*l*)	706(1)
41a(a)	771(b)(1)
41a(b)	771(b)(2), 776
41a(b)(1)(A)-(C)	776(b)(1)(A)-(C)
41a(b)(2)	776(b)(4)
41a(b)(3)	See 780(b)
41a(b)(4)	776(b)(5)
41a(c)	771(b)(3)
41a(d), (e)	776(c), (d)
41a(f), (g)	771(c), (d)
41a(h)	776(e)
41a(i)	771(a)
41a(j)(1), (2)	706(1)
41a(j)(3)	776(f)
41b(a)(1)-(3)	772(b)(1)-(3)
41b(a)(4)	776(e)
41b(1), (2)	772(c)(1), (2)
41b(b)(3)	776(e)
41b(c)	774(e)
41b(d)(1)-(4)	Repealed
41b(e)	776(b)(4)
41b(f)	772(a), 774
41c	721(a)(4)

Effective Date of Repeal

Sections repealed effective 90 days after Sept. 26, 1973, see section 500(a) of Pub. L. 93-112, set out as section 790(a) of this title.

Increase of Allotment Percentages for Alaska

Pub. L. 86-624, § 47(g) July 12, 1960, 74 Stat. 424, provided that the allotment percentage determined for Alaska under section 41(h) of this title for the first to fourth years for which such percentage was based on the per capita income data for Alaska was to be increased by varying amounts each of those four years, that the federal share for Alaska determined under section 41(i) of this title, for the first year for which such share was based on per capita income data for Alaska, was to be increased, and that where the first year for which such federal share was based on per capital income data for Alaska was a fiscal year ending prior to July 1, 1962, the adjusted federal share for Alaska for such year for purposes of section 32(b) of this title was to be the federal share determined pursuant to section 41(i) of this title.

Limitation on Expenditure of Funds for Special Projects

Act Aug. 1, 1955, ch. 437, title II, § 201, 69 Stat. 403, provided in part that not more than $2 of the funds made available for special projects under section 34(a)(2) of this title was to be expended for any project for each $1 that the grantee, or the grantee and the State, expended for the same purpose.

District of Columbia Vocational Rehabilitation Program

Act Aug. 3, 1954, ch. 655, § 3, 68 Stat. 662, provided that materials which the Director of the Bureau of the Budget [now the Director of the Office of Management and Budget] determined related to the provision of vocational rehabilitation services in the District of Columbia or the performance of certain functions by State licensing agencies were to be transferred within ninety days after Aug. 3, 1954, from the Department of Health, Education, and Welfare to the municipal government of the District of Columbia, authorized the Board of Commissioners of the District of Columbia [now the Mayor of the District of Columbia] to take the necessary steps to secure the benefits of act June 2, 1920, ch. 219, 41 Stat. 735, and also authorized the Secretary of Health, Education, and Welfare to continue the performance of certain functions

relating to rehabilitation services in the District of Columbia until the completion of the transfer of responsibility.

HOMEBOUND PHYSICALLY HANDICAPPED INDIVIDUALS

Act Aug. 3, 1954, ch. 655, § 7, 68 Stat. 665, which required the Secretary of Health, Education, and Welfare to make a thorough study of existing programs for teaching and training handicapped persons, commonly known as shut-ins, whose disabilities confine them to their homes or beds, for the purpose of ascertaining whether additional or supplementary programs or services are necessary, particularly in rural areas, in order to provide adequate general ameliorative and vocational training for such handicapped persons, provided that the Secretary shall report to the Congress not later than six months after Aug. 3, 1954 the results of such study, together with such recommendations as may be desirable.

STATE COMPLIANCE WITH CHAPTER

Act July 6, 1943, ch. 190, § 3(b), 57 Stat. 380, authorized particular States which were unable to comply with the preconditions of act June 2, 1920, ch. 219, 41 Stat. 735, on July 6, 1943, to secure the benefits of such act, for a period of sixty days after their particular State legislatures meet for the first time after such date.

APPROPRIATIONS FOR VOCATIONAL REHABILITATION

Act June 26, 1940, ch. 428, 54 Stat. 583, making appropriations for the fiscal year ending June 30, 1941, made certain appropriations for cooperative vocational rehabilitation, and expenses connected therewith, with provisions for apportionment to the States to be computed in accordance with act June 2, 1920, ch. 219, 41 Stat. 735, and other acts.

§§ 41d, 42. Repealed. Pub. L. 90–391, § 13, July 7, 1968, 82 Stat. 304

Section 41d, act June 2, 1920, ch. 219, § 15, as added Nov. 8, 1965, Pub. L. 89–333, § 3, 79 Stat. 1289, established a National Commission on Architectural Barriers to Rehabilitation of the Handicapped in the Department of Health, Education, and Welfare, and provided for its membership and functions, appointment of experts and consultants, technical and administrative assistance, compensation of Commission members, interim and final reports, and authorization of appropriations.

Section 42, act June 2, 1920, ch. 219, § 16, formerly § 12, as added Aug. 3, 1954, ch. 655, § 2, 68 Stat. 662, amended Sept. 10, 1965, Pub. L. 89–178, § 2, 79 Stat. 676, and renumbered Nov. 8, 1965, Pub. L. 89–333, § 3, 79 Stat. 1284, authorized grants for special projects in correctional rehabilitation, prescribed conditions therof, defined "organization", established a National Advisory Council on Correctional Manpower and Training in the Department of Health, Education, and Welfare, and provided for its composition, selection of members, functions, compensation and travel expenses, appropriations, terms of grant, and additional financial support.

CORRECTIONAL REHABILITATION RESEARCH AND STUDY; TIME EXTENSION FOR FINAL REPORT

Pub. L. 91–6, Mar. 28, 1969, 83 Stat. 6, provided that the date by which the research and study initiated and the final report required by section 42 of this title (as in effect prior to July 7, 1968) was to be completed was July 31, 1969.

§§ 42–1 to 42b. Repealed. Pub. L. 93–112, title V, § 500(a), Sept. 26, 1973, 87 Stat. 390

Section 42–1, act June 2, 1920, ch. 219, § 15, as added July 7, 1968, Pub. L. 90–391, § 13, 82 Stat. 304, and amended Dec. 31, 1970, Pub. L. 91–610, § 5, 84 Stat. 1817, related to vocational evaluation and work adjustment program, providing in: subsec. (a) for computation of allotments, authorization of appropriations, Federal payments, restriction on payments, evaluation and work adjustment services, and disadvantaged individuals; subsec. (b) for restriction on payments; subsec. (c) for State plans and requirements for approval; subsec. (d) for withholding of payments and judicial review; and subsec. (e) for payments to States adjustments, advances or reimbursement, installments, and conditions.

Section 42a, act June 2, 1920, ch. 219, § 16, formerly § 17, as added Oct. 3, 1967, Pub. L. 90–99, § 4, 81 Stat. 251, renumbered July 7, 1968, Pub. L. 90–391, § 13, 82 Stat. 304, related to National Center for Deaf-Blind Youths and Adults, providing in: subsec. (a) for statement of purpose, agreement for establishment and operation of the National Center, and its designation; subsec. (b) for proposals and preference; subsec. (c) for terms and conditions of agreement; subsec. (d) for recovery of funds for non-user of facilities for contemplated purposes or termination of agreement, and cause for release from obligation; and subsec. (e) for definition of "construction" for determination pursuant to regulations of the Secretary of who are both deaf and blind. Subsections (c)(2) to (4) of section 42a were amended by Pub. L. 93–608, § 1(8), Jan. 2, 1975, 88 Stat. 1968, without reference to the repeal of this section by Pub. L. 93–112. The purported amendment would have eliminated the annual report of the National Center for Deaf-Blind Youths and Adults, through the Secretary of the Department of Health, Education, and Welfare, to the Congress with comments and recommendations as the Secretary deemed appropriate.

Section 42b, act June 2, 1920, ch. 219, § 17, formerly § 18, as added Oct. 3, 1967, Pub. L. 90–99, § 5, 81 Stat. 252, and renumbered July 7, 1968, Pub. L. 90–391, § 13, 82 Stat. 304, related to grants for services for migratory agricultural workers, authorization, payments, and other related provisions.

Sections 42–1 to 42b, referred to above, and sections 31 to 41c of this title, were known as the Vocational Rehabilitation Act. Section 500(a) of Pub. L. 93–112, which repealed that Act, also provided that references to such Vocational Rehabilitation Act in any other provision of law shall, ninety days after Sept. 26, 1973, be deemed to be references to the Rehabilitation Act of 1973, which is classified generally to chapter 15 (§ 701 et seq.) of this title. See section 790 of this title.

Such former provisions are now covered by various sections as follows:

Former sections	*Present sections*
42–1(a)(1)	See 730(a), 740(a)
42–1(a)(2)	720(b)(1)
42–1(a)(3)	Repealed
42–1(a)(4)(A)–(F)	706(4)(A)–(F)
42–1(a), last sentence	Repealed
42–1(b)	709
42–1(c)	See 721(a)
42–1(c)(1)	721(a)(1)
42–1(c)(2)	721(a)(3)
42–1(c)(3)	721(a)(5)(A)
42–1(c)(4), (5)	721(a)(6), (7)
42–1(c)(6)	Repealed
42–1(c)(7)	721(a)(10)
42–1(c)(8)	See 721(a)(11)
42–1(d)	See 721(c), (d)
42–1(e)	See 776(e)
42a(a), (b)	775(b), (c)
42a(c)(1)–(3)	776(b)(2), (3), (5)
42a(c)(4)	Repealed
42a(d)	776(d)
42a(e)(1)	706(1)
42a(e)(2)	See 723(a)(6)
42b	774(c)

EFFECTIVE DATE OF REPEAL

Sections repealed effective 90 days after Sept. 26, 1973, see section 500(a) of Pub. L. 93–112, set out as section 790(a) of this title.

§§ 43 to 45b. Omitted

CODIFICATION

Section 43, formerly constituting part of section 7 of act June 2, 1920, ch. 219, 41 Stat. 737, as amended by Ex. Ord. No. 6166, § 15, June 10, 1933; 1939 Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, related to report, by Federal Security Agency, of gifts or donations. Act June 2, 1920, was amended generally by act July 6, 1943, ch. 190, 57 Stat. 374, which did not contain similar provisions.

Section 44, formerly constituting part of section 7 of act June 2, 1920, ch. 219, 41 Stat. 737, related to prohibition of discrimination for or against persons entitled to benefits of act of June 2, 1920. Act June 2, 1920, was amended generally by act July 6, 1943, ch. 190, 57 Stat. 374, which did not contain similar provisions.

Section 45, act Mar. 10, 1924, ch. 46, § 5, 43 Stat. 18, related to extension of provisions of sections 31 to 44 of this title to the Territory of Hawaii and appropriation authorization for allotment.

Section 45a, acts Mar. 3, 1931, ch. 404, § 2, 46 Stat. 1489; May 17, 1932, ch. 190, 47 Stat. 158, related to extension of provisions of sections 31 to 44 of this title upon the same terms and conditions as any of the several states.

Section 45b, acts Aug. 14, 1935, ch. 531, title V, § 531, 49 Stat. 633; Aug. 10, 1939, ch. 666, title V, § 508, 53 Stat. 1381, related to an authorization of appropriations for each fiscal year after fiscal year ending June 30, 1937 and appropriations therefor together with apportionment of appropriations to the states and to the Territory of Hawaii.

CHAPTER 4A—EMPLOYMENT STABILIZATION

PRIOR PROVISIONS

A prior chapter 4A, consisting of sections 47 to 47f, act Feb. 23, 1929, ch. 303, §§ 1 to 7, 45 Stat. 1260, related to vocational rehabilitation of disabled residents of the District of Columbia.

§§ 48, 48a. Omitted

CODIFICATION

Sections 48 to 48g of this title comprised the Employment Stabilization Act of 1931, act Feb. 10, 1931, ch. 117, §§ 1 to 8, 46 Stat. 1084 to 1086, which became obsolete upon the abolition of the National Resources Planning Board effective Aug. 31, 1943, by act June 26, 1943, ch. 145, title I, § 1, 57 Stat. 170.

Section 48, act Feb. 10, 1931, ch. 117, § 1, 46 Stat. 1084, related to citation of "Employment Stabilization Act of 1931".

Section 48a, act Feb. 10, 1931, ch. 117, § 2, 46 Stat. 1084; Ex. Ord. No. 6623, Mar. 1, 1934; 1939 Reorg. Plan No. I, §§ 4, 6 eff. July 1, 1939, 4 F.R. 2727, 53 Stat. 1423; 1939 Reorg. Plan No. II, § 4(e), (f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232, related to definitions of terms used in this chapter.

§ 48b. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648

Section, act Feb. 10, 1931, ch. 117, § 3, 46 Stat. 1085, Ex. Ord. No. 6623, Mar. 1, 1934; 1939 Reorg. Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 F.R. 2727, 53 Stat. 1423, related to powers and duties of the National Resources Planning Board, which was abolished by act June 26, 1943, ch. 145, title I, § 1, 57 Stat. 170.

§§ 48c to 48g. Omitted

CODIFICATION

Section 48c, act Feb. 10, 1931, ch. 117, § 4, 46 Stat. 1085; Ex. Ord. No. 6623, Mar. 1, 1934; 1939 Reorg. Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 F.R. 2727, 53 Stat. 1423, related to basis of action of the National Resources Planning Board which was abolished. See note below.

Section 48d, act Feb. 10, 1931, ch. 117, § 5, 46 Stat. 1086; Ex. Ord. No. 6623, Mar. 1, 1934; 1939 Reorg. Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 F.R. 2727, 53 Stat. 1423, related to public works emergency appropriations during existence of depression periods.

Section 48e, act Feb. 10, 1931, ch. 117, § 6, 46 Stat. 1086, related to use of the emergency appropriations authorized by section 48d of this title.

Section 48f, act Feb. 10, 1931, ch. 117, § 7, 46 Stat. 1086, related to acceleration of emergency construction work.

Section 48g, act Feb. 10, 1931, ch. 117, § 8, 46 Stat. 1086; Ex. Ord. No. 6623, Mar. 1, 1934; 1939 Reorg. Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 F.R. 2727, 53 Stat. 1423, related to advance planning by construction agencies of the government and submission of programs, plans, and estimates to the National Resources Planning Board which was abolished. See note below.

NATIONAL RESOURCES PLANNING BOARD

The National Resources Planning Board was abolished August 31, 1943, by act June 26, 1943, ch. 145, title I, § 1, 57 Stat. 170, and it was expressly provided that its functions were not to be transferred to any other agency, that the Director should exercise until January 1, 1944, such authority as was necessary to effectuate the discontinuance of the Board, and that the records and files of the Board should be transferred to the national archives.

CHAPTER 4B—FEDERAL EMPLOYMENT SERVICE

Sec.

49. United States Employment Service; bureau established; transfer of records, employees, etc., of existing employment service.
49a. Officers and employees; veterans' preferences.
49b. Employment offices; development of national system; veterans' service; supplying of data in aid of administration of programs of aid to families with dependent children and child support; "State" defined.
49c. Acceptance by States; creation of State agencies.
49c-1. Transfer to States of property used by United States Employment Service.
49c-2. Omitted.
49c-3. Repealed.
49c-4. Transferred.
49c-5. Omitted.
49d. Appropriations; certification for payment to States.
49d-1. Omitted.
49e, 49f. Repealed.
49g. State plans for carrying out law; submission to Secretary of Labor.
49h. Reports by State agencies; revocation of certificates to Treasury.
49i. Expenditures authorized before adoption of State systems; time limit.
49j. Federal Advisory Council; establishment and composition; State Advisory Councils; notice of strikes and lockouts to applicants.
49k. Rules and regulations.
49l. Transferred.
49m, 49n. Omitted.

CROSS REFERENCES

National Policy on Employment, see sections 1021 to 1025 of Title 15, Commerce and Trade.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 605, 816, 954, 981 of this title; title 7 sections 2043, 2045; title 39 section 3202; title 42 sections 1101, 4728.

CHAPTER REFERRED TO IN D.C. CODE

This section is referred to in sections 36-701, 46-313 of the District of Columbia Code.

§ 49. United States Employment Service; bureau established; transfer of records, employees, etc., of existing employment service

In order to promote the establishment and maintenance of a national system of public employment offices there is created in the Department of Labor a bureau to be known as the United States Employment Service.

(June 6, 1933, ch. 49, § 1(a), 48 Stat. 113; 1939 Reorg. Plan No. I, § 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1425.)

CODIFICATION

Section 1(b) of act June 6, 1933, abolished the then existing employment service three months after enactment of act June 6, 1933, and transferred property, functions, etc., to United States Employment Service.

Provisions of section 1(a) of act June 6, 1933, relating to the appointment and compensation of the Director of the United States Employment Service, were omitted as obsolete pursuant to Reorg. Plan No. I of 1939.

SHORT TITLE

The act of June 6, 1933, ch. 49, 48 Stat. 113, which is classified to this chapter and section 338 of former title 39 (now section 3202 of Title 39, Postal Service), is popularly known as the "Wagner-Peyser Act".

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Labor under this chapter, insofar as relates to the prescription of personnel standards on a merit basis, transferred to United States Civil Service Commission, see Pub. L. 91-648, § 208, set out as section 4728 of Title 42, The Public Health and Welfare.

All functions of all other officers of the Department of Labor and functions of all agencies and employees of that Department were, with the exception of the functions vested by the Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by such Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

The United States Employment Service was transferred to the Department of Labor, the functions of the Federal Security Administrator with respect to employment services, and the Bureau of Employment Security were transferred to the Secretary of Labor by Reorg. Plan No. 2 of 1949, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065, set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949, also provided that the functions transferred by this section shall be performed by the Secretary of Labor or, subject to his direction and control, by such officers, agencies, and employees of the Department of Labor as he shall designate.

Act June 16, 1948, ch. 472, title I, § 101, 62 Stat. 446, provided in part that: "Effective July 1, 1948, the United States Employment Service, including its functions under title IV of the Servicemen's Readjustment Act of 1944, is transferred to the Federal Security Agency, and on and after such date the functions of the Secretary of Labor with respect to the United States Employment Service are transferred to the Federal Security Administrator and shall be performed by him or, under his direction and control, by such officers and employees of the Federal Security Agency as he may designate. There are transferred to the Federal Security Agency, for use in connection with the functions transferred by the provisions of this paragraph, the personnel, property, and records of the Department of Labor related to the United States Employment Service, and the balances of such prior appropriations, allocations, and other funds available to the United States Employment Service as the Director of the Bureau of the Budget may determine. The provisions of section 9 of the Reorganization Act of 1945 (Public Law 263, Seventy-ninth Congress) shall apply to the transfer effected by this paragraph in like manner as if such transfer were a reorganization of the agencies and functions concerned under the provisions of that Act."

The United States Employment Service and all functions of the Social Security Board in the Federal Security Agency relating to employment service were transferred to the War Manpower Commission by Ex. Ord. No. 9247, Sept. 17, 1942, 7 F.R. 7379. That Commission was terminated by Ex. Ord. No. 9617, Sept. 19, 1945, 10 F.R. 11929, and the United States Employment Service transferred to the Department of Labor.

Reorg. Plan No. I of 1939, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, set out in the Appendix to Title 5, Government Organization and Employees, consolidated the United States Employment Service in the Department of Labor and its functions and personnel, with other offices and agencies, under one agency to be known as the Federal Security Agency with a Federal Security Administrator at the head thereof.

Section 203 of Reorg. Plan No. I of 1939, provided that the functions of the United States Employment Service should be consolidated with the unemployment compensation functions of the Social Security Board and should be administered in the Social Security Board in connection with the unemployment compensation functions under the direction and supervision of the Federal Security Administrator.

Section 203 of Reorg. Plan No. I of 1939, further, abolished the office of Director of the United States Employment Service and transferred all the functions of that office to the Social Security Board, to be exercised by the Board, and provided that the functions of the Secretary of Labor relating to the administration of the United States Employment Service should be transferred to, and exercised by, the Federal Security Administrator.

ADMINISTRATION OF MANPOWER IN DISTRICT OF COLUMBIA

Pub. L. 93-198, title II, § 204(a), Dec. 24, 1973, 87 Stat. 783, provided that: "All functions of the Secretary of Labor (hereafter in this section referred to as the Secretary) under section 3 of the Act [section 49b of this title] entitled 'An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes', approved June 6, 1933 (29 U.S.C. 49-49k), with respect to the maintenance of a public employment service for the District [of Columbia], are transferred [effective July 1, 1974] to the Commissioner [of the District of Columbia established under Reorg. Plan No. 3 of 1967 (now the Mayor)]. After the effective date of this transfer [July 1, 1974], the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the States) generally."

RECRUITMENT AND DISTRIBUTION OF FARM LABOR

Act July 3, 1948, ch. 823, 62 Stat. 1238, § 1, authorized the Federal Security Administrator to recruit foreign workers within the Western Hemisphere and workers in Puerto Rico for temporary agricultural employment in the continental United States and to direct, supervise, coordinate, and provide for the transportation of those workers from such places of recruitment to and between places of employment within the continental United States and return to the places of recruitment not later than June 30, 1949.

Section 2 of act July 3, 1948, appropriated $2,500,000, for fiscal year ending June 30, 1949, to carry out the purposes of section 1 of act July 3, 1948.

FARM PLACEMENT SERVICE

Act Apr. 28, 1947, ch. 43, § 2, 61 Stat. 55, provided:

"(a) The provisions of the Farm Labor Supply Appropriation Act, 1944 (Public Law 229, Seventy-eighth Congress, second session, title I [sections 1351 to 1355 of Appendix to Title 50, War and National Defense]), as amended and supplemented, and as extended by this Act, shall not be construed to limit or interfere with any of the functions of the United States Employment Service or State public employment services with respect to maintaining a farm placement service as authorized under the Act of June 6, 1933 (48 Stat. 113) [this chapter].

"(b) The Secretary of Agriculture and the Secretary of Labor shall take such action as may be necessary to assure maximum cooperation between the agricultural extension services of the land-grant colleges and the State public employment agencies in the recruitment and placement of domestic farm labor and in the keeping of such records and information with respect thereto as may be necessary for the proper and efficient administration of the State unemployment compensation laws and of title V of the Servicemen's Readjustment Act of 1944, as amended (58 Stat. 295)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3202.

§ 49a. Officers and employees; veterans' preferences

The Secretary of Labor is authorized to appoint one or more assistant directors and such other officers, employees, and assistants, and to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere and for law books, books of reference, and periodicals) as may be necessary to carry out the provisions of this chapter. In case of appointments for service in the veterans' employment service provided for in section 49b of this title, the Secretary shall appoint only veterans of wars of the United States.

(June 6, 1933, ch. 49, § 2, 48 Stat. 114.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning act June 6, 1933, ch. 49, 48 Stat. 113, which was classified to this chapter and section 338 of former Title 39, The Postal Service. Section 338 of former title 39 was repealed and reenacted as section 4152 of former Title 39, The Postal Service, by Pub. L. 86–682, Sept. 2, 1960, 74 Stat. 578. Section 4152 of former title 39 was repealed and reenacted as section 3202 of Title 39, Postal Service, by Pub. L. 91–375, Aug. 12, 1970, 84 Stat. 719.

CODIFICATION

Provisions that authorized the Secretary of Labor to appoint "without regard to the civil service laws" and to fix the compensation "without regard to the Classification Act of 1923, as amended" of one or more assistant directors and such other officers, employees, and assistants as may be necessary to carry out the provisions of this chapter, were omitted as obsolete.

Such appointments are now subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in this section because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

TRANSFER OF FUNCTIONS

For transfer of functions, powers, and duties of the Secretary of Labor under this chapter, insofar as relates to the prescription of personnel standards on a merit basis, to the United States Civil Service Commission, see Pub. L. 91–648, § 208, set out as section 4728 of Title 42, The Public Health and Welfare.

For history of transfer of functions of the United States Employment Service, see Transfer of Functions notes under section 49 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3202.

§ 49b. Employment offices; development of national system; veterans' service; supplying of data in aid of administration of programs of aid to families with dependent children and child support; "State" defined

(a) It shall be the province and duty of the bureau to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, including employment counseling and placement services for handicapped persons, to maintain a veterans' service to be devoted to securing employment for veterans, to maintain a farm placement service, and, in the manner hereinafter provided, to assist in establishing and maintaining systems of public employment offices in the several States and the political subdivisions thereof in which there shall be located a veterans' employment service. The bureau shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the several States. It shall be the further duty of the bureau to assure that such employment offices in each State, upon request of a public agency administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] or of a public agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act [42 U.S.C. 651 et seq.], shall (and, notwithstanding any other provision of law, is hereby authorized

to) furnish to such agency making the request, from any data contained in the files of any such employment office, information with respect to any individual specified in the request as to (A) whether such individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual, (B) the current (or most recent) home address of such individual, and (C) whether such individual has refused an offer of employment and, if so, a description of the employment so offered and terms, conditions, and rate of pay therefor.

(b) Whenever in this chapter the word "State" or "States" is used, it shall be understood to include Puerto Rico, Guam, the District of Columbia, and the Virgin Islands.

(June 6, 1933, ch. 49, § 3, 48 Stat. 114; Sept. 8, 1950, ch. 933, § 1, 64 Stat. 822; Aug. 3, 1954, ch. 655, § 6(a), 68 Stat. 665; Aug. 1, 1956, ch. 852, § 17(a), 70 Stat. 910; July 12, 1960, Pub. L. 86-624, § 21(a), 74 Stat. 417; Dec. 24, 1973, Pub. L. 93-198, title II, § 204(c), 87 Stat. 783; Oct. 20, 1976, Pub. L. 94-566, title V, § 508(a), 90 Stat. 2689.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Part D of title IV of such Act is classified generally to part D (§ 651 et seq.) of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-566 provided that the bureau has a further duty to assure that the employment offices in each State, upon request of a public agency administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act or of a public agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act, furnish to such agency making the request, from any data contained in the files of any such employment office, information with respect to any individual specified in the request as to whether such individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual, the current (or most recent) home address of such individual, and whether such individual has refused an offer of employment and, if so, a description of the employment so offered and terms, conditions, and rate of pay therefor.

1973—Subsec. (a). Pub. L. 93-198, § 204(c)(1), eliminated the function of maintaining a public employment service for the District of Columbia from the functions of the bureau.

Subsec. (b). Pub. L. 93-198, § 204(c)(2), included District of Columbia in the definition of "State" or "States".

1960—Subsec. (b). Pub. L. 86-624 eliminated "Hawaii, Alaska," preceding "Puerto Rico".

1956—Subsec. (b). Act Aug. 1, 1956, insert "Guam" after "Puerto Rico".

1954—Subsec. (a). Act Aug. 3, 1954, added provisions relating to employment counseling and placement services for handicapped persons.

1950—Subsec. (b). Act Sept. 8, 1950, included Puerto Rico and Virgin Islands within definition of "State" or "States".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771(b) of Pub. L. 93-198 provided in part that title II of Pub. L. 93-198 [which amended sections 49b and 50 of this title, and enacted provisions set out as notes under section 49 of this title and section 8101 of Title 5, Government Organization and Employees], shall take effect on July 1, 1974.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 8 of act Aug. 3, 1954, provided that: "The amendments made by this Act [enacting section 107e-1 of Title 20, Education, and amending sections 31 to 41, 42, 49b, and 49g of this title and sections 107, 107a, 107b, 107e, and 107f of Title 20] shall become effective July 1, 1954."

TRANSFER OF FUNCTIONS

For history of transfer of functions of the United States Employment Service, see Transfer of Functions notes under section 49 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 49a of this title; title 39 section 3202; title 42 section 603a.

§ 49c. Acceptance by States; creation of State agencies

In order to obtain the benefits of appropriations apportioned under section 49d of this title, a State shall, through its legislature, accept the provisions of this chapter and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under this chapter.

(June 6, 1933, ch. 49, § 4, 48 Stat. 114.)

TRANSFER OF FUNCTIONS

For history of transfer of functions of the United States Employment Service, see Transfer of Functions notes under section 49 of this title.

TRANSFER OF STATE AGENCIES TO THE STATES

Act July 26, 1946, ch. 672, title I, § 101, 60 Stat. 684, provided in part: "On November 15, 1946, the Secretary of Labor shall transfer, to the State agency in each State designated under section 4 of the Act of Congress approved June 6, 1933, as amended [this section], as the agency to administer the State-wide system of public employment offices in cooperation with the United States Employment Service under said Act [this chapter], the operation of State and local public employment office facilities and properties which were transferred by such State to the Federal Government in 1942 to promote the national war effort. The Secretary of Labor shall, on request of the State agency, also provide for the transfer and assignment to such State, without reimbursement therefor, of any other public employment office facilities and properties within such State, including records, files, and office equipment: *Provided*, That as a condition to such transfer and assignment of Federal properties, the Secretary may require the recipient State to waive any claim which may then exist or thereafter arise out of the use made by the Federal Government of, or for the loss of or damage to, property and facilities transferred to the Federal Government as hereinabove described."

CROSS REFERENCES

Transfer of Federal property to States, see section 49c-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 49c-1 of this title; title 39 section 3202.

§ 49c–1. Transfer to States of property used by United States Employment Service

For the purpose of assisting the State employment services established and maintained in accordance with the terms of this chapter, the Secretary of Labor is authorized without payment of compensation to transfer and assign to the States in which it is located all property, including records, files, and office equipment, used by the United States Employment Service in its administrative and local employment offices in the respective States, except the records, files, and property used in the Veterans' Service and in the Farm Placement Service maintained under this chapter, as soon as such States establish and maintain systems of public employment offices, in accordance with the terms of sections 49c, 49d, and 49g of this title and the regulations promulgated thereunder.

(Aug. 11, 1939, ch. 693, 53 Stat. 1409; Ex. Ord. No. 9247, Sept. 17, 1942, 7 F.R. 7379; Ex. Ord. No. 9617, Sept. 19, 1945, 10 F.R. 11929; June 16, 1948, ch. 472, title I, § 101, 62 Stat. 446; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065.)

CODIFICATION

This section was not enacted as part of act June 6, 1933, ch. 49, 48 Stat. 113, which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions, powers and duties of Secretary of Labor under this chapter, insofar as relates to the prescription of personnel standards on a merit basis, to United States Civil Service Commission, see Pub. L. 91–648, § 208, set out as section 4728 of Title 42, The Public Health and Welfare.

For history of transfer of functions of the United States Employment Service to the Secretary of Labor, see Transfer of Functions notes under section 49 of this title.

§ 49c–2. Omitted

CODIFICATION

Section act July 26, 1946, ch. 672, title I, § 101, 60 Stat. 684, 685, which authorized transfer to and retention in State system of public employment offices of Federal employees, was from the Department of Labor Act, 1947, and was not repeated in subsequent appropriation acts.

§ 49c–3. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 653

Section, act July 26, 1946, ch. 672, title I, § 101, 60 Stat. 685, provided for refund of retirement deductions and interest to members of Social Security Boards returning to State employment.

§ 49c–4. Transferred

CODIFICATION

Section, Pub. L. 88–136, title I, § 101, Oct. 11, 1963, 77 Stat. 226, relating to personnel standards, was transferred to section 49n of this title and subsequently omitted.

§ 49c–5. Omitted

CODIFICATION

Section, act July 8, 1947, ch. 210, title I, § 101, 61 Stat. 263, related to a joint budget, was from the Department of Labor Appropriation Act, 1948, and was not repeated in subsequent appropriation acts. Similar provisions were contained in act July 26, 1946, ch. 672, title I, § 101, 60 Stat. 686.

§ 49d. Appropriations; certification for payment to States

(a) There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts from time to time as the Congress may deem necessary to carry out the purposes of this chapter.

(b) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State which (i), except in the case of Guam, has an unemployment compensation law approved by the Secretary under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] and is found to be in compliance with section 503 of title 42 and (ii) is found to be in compliance with this chapter, such amounts as the Secretary determines to be necessary for the proper and efficient administration of its public employment offices.

(June 6, 1933, ch. 49, § 5, 48 Stat. 114; May 10, 1935, ch. 102, 49 Stat. 216; June 29, 1938, ch. 816, 52 Stat. 1244; Sept. 8, 1950, ch. 933, § 2, 64 Stat. 822; Aug. 1, 1956, ch. 852, § 17(b), 70 Stat. 910; Sept. 13, 1960, Pub. L. 86–778, title V, § 543(c), 74 Stat. 987; Oct. 20, 1976, Pub. L. 94–566, title I, § 116(c), 90 Stat. 2672.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (b), is act Aug. 16, 1954, ch. 736, §§ 3301 to 3311, 68A Stat. 454, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see sections 3311 of Title 26 and Tables volume.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–566 substituted "Guam" for "Guam and the Virgin Islands".

1960—Subsec. (b). Pub. L. 86–778 substituted "Guam and the Virgin Islands" for "Puerto Rico, Guam, and the Virgin Islands".

1956—Subsec. (b). Act Aug. 1, 1956, inserted "Guam" after "Puerto Rico".

1950—Act, Sept. 8, 1950, eliminated the apportionment formula and the requirement that the States match the funds granted them.

1938—Subsec. (a). Act June 29, 1938, substituted "The annual appropriation under this chapter shall designate the amount to" for "Seventy-five per centum of the amounts appropriated under this chapter shall", at the beginning of the second sentence, and "the said amount among the several States" for "said 75 per centum of amounts appropriated after January 1, 1935, under this chapter" in proviso.

1935—Subsec. (a). Act May 10, 1935, inserted proviso.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 effective on the later of Oct. 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of Title 26, Internal Revenue Code, an unemployment compensation law submitted to him by the Virgin Islands for approval, see section 116(f)(1) of Pub. L. 94–566, set out as an Effective Date of 1976 Amendment note under section 3304 of title 26.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 543(c) of Pub. L. 86–778 provided in part that the amendment of subsec. (b) by Pub. L. 86–778 shall be effective on and after Jan. 1, 1961.

TRANSFER OF FUNCTIONS

For transfer of functions, powers, and duties of the Secretary of Labor under this chapter, insofar as relates to the prescription of personnel standards on a merit basis, to the United States Civil Service Commission, see Pub. L. 91-648, § 208, set out as section 4728 of Title 42, The Public Health and Welfare.

For history of transfer of functions of the United States Employment Service, see Transfer of Functions notes under section 49 of this title.

SUSPENSION OF STATE APPROPRIATION REQUIREMENTS UNTIL JULY 1, 1952

Act Sept. 6, 1950, ch. 896, ch. V, title I, § 101, 64 Stat. 643, provided in part that: "No State shall be required to make any appropriation as provided in section 5(a) of said Act of June 6, 1933 [subsec. (a) of this section], prior to July 1, 1952."

Similar provisions suspending the requirement until July 1, 1950 were contained in acts June 16, 1948, ch. 472, title I, § 101, 62 Stat. 445, June 29, 1949, ch. 275, title II, § 201, 63 Stat. 284.

CROSS REFERENCES

Transfer of Federal property to States, see section 49c-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49c, 49c-1 of this title; title 39 section 3202.

§ 49d-1. Omitted

CODIFICATION

Section, act June 16, 1937, ch. 359, title IV, § 1, 50 Stat. 302, provided for reapportionment of unexpended appropriations.

§§ 49e, 49f. Repealed. Sept. 8, 1950, ch. 933, § 3, 64 Stat. 823

Section 49e, act June 6, 1933, ch. 49, § 6, 48 Stat. 115, related to apportionment of appropriations, and certification to Secretary of Treasury.

Section 49f, act June 6, 1933, ch. 49, § 7, 48 Stat. 115, related to ascertainment of amount due States, and certification to Secretary of Treasury.

§ 49g. State plans for carrying out law; submission to Secretary of Labor

Any State desiring to receive the benefits of this chapter shall, by the agency designated to cooperate with the United States Employment Service, submit to the Secretary of Labor detailed plans for carrying out the provisions of this chapter within such State. Such plans shall include provision for the promotion and development of employment opportunities for handicapped persons and for job counseling and placement of such persons, and for the designation of at least one person in each State or Federal employment office, whose duties shall include the effectuation of such purposes. In those States where a State board, department, or agency exists which is charged with the administration of State laws for vocational rehabilitation of physically handicapped persons, such plans shall include provision for cooperation between such board, department, or agency and the agency designated to cooperate with the United States Employment Service under this chapter. If such plans are in conformity with the provisions of this chapter and reasonably appropriate and adequate to carry out its purposes, they shall be approved by the Secretary and due notice of such approval shall be given to the State agency.

(June 6, 1933, ch. 49, § 8, 48 Stat. 115; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, 1425; Ex. Ord. No. 9247, Sept. 17, 1942, 7 F.R. 7379; Ex. Ord. No. 9617, Sept. 19, 1945, 10 F.R. 11929; June 16, 1948, ch. 472, title I, § 101, 62 Stat. 446; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 3, 1954, ch. 655, § 6(b), 68 Stat. 665.)

AMENDMENTS

1954—Act Aug. 3, 1954, included provisions relating to the promotion and development of employment opportunities and for job counseling and placement of handicapped persons.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 3, 1954, effective July 1, 1954, see section 8 of act Aug. 3, 1954, set out as an Effective Date of 1954 Amendment note under section 49b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, powers and duties of Secretary of Labor under this chapter, insofar as relates to the prescription of personnel standards on a merit basis, to United States Civil Service Commission, see Pub. L. 91-648, § 208, set out as section 4728 of Title 42, The Public Health and Welfare.

For history of transfer of functions of the United States Employment Service to the Secretary of Labor, see Transfer of Functions notes under section 49 of this title.

CROSS REFERENCES

Transfer of Federal property to States, see section 49c-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 49c-1 of this title; title 39 section 3202.

§ 49h. Reports by State agencies; revocation of certificates to Treasury

Each State agency cooperating with the United States Employment Service under this chapter shall make such reports concerning its operations and expenditures as shall be prescribed by the Secretary of Labor. It shall be the duty of the Secretary to ascertain whether the system of public employment offices maintained in each State is conducted in accordance with the rules and regulations and the standards of efficiency prescribed by the Secretary in accordance with the provisions of this chapter. The Secretary may revoke any existing certificates or withhold any further certificate provided for in section 49f of this title, whenever he shall determine, as to any State, that the cooperating State agency has not properly expended the moneys paid to it or the moneys herein required to be appropriated by such State, in accordance with plans approved under this chapter. Before any such certificate shall be revoked or withheld from any State, the Secretary shall give notice in writing to the State agency stating specifically wherein the State has failed to comply with such plans.

(June 6, 1933, ch. 49, § 9, 48 Stat. 116; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, 1425; Ex. Ord. No. 9247, Sept. 17, 1942, 7 F.R. 7379; Ex. Ord. No.

9617, Sept. 19, 1945, 10 F.R. 11929; June 16, 1948, ch. 472, title I, § 101, 62 Stat. 446; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065.)

REFERENCES IN TEXT

Section 49f of this title, referred to in the text, was repealed by act Sept. 8, 1950, ch. 933, § 3, 64 Stat. 823.

CODIFICATION

Provisions of this section, relating to an appeal by a State agency to the Secretary of Labor from the actions of the director, were omitted as obsolete pursuant to Reorg. Plan No. I of 1939.

TRANSFER OF FUNCTIONS

For transfer of functions, powers and duties of Secretary of Labor under this chapter, insofar as relates to the prescription of personnel standards on a merit basis, to United States Civil Service Commission, see Pub. L. 91-648, §§ 208, set out as section 4728 of Title 42, The Public Health and Welfare.

For history of transfer of functions of the United States Employment Service to the Secretary of Labor, see Transfer of Functions notes under section 49 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3202.

§ 49i. Omitted

CODIFICATION

Section, act June 6, 1933, ch. 49, § 10, 48 Stat. 116, limited expenditures in States prior to adoption of State systems, to the current fiscal year and two fiscal years thereafter.

§ 49j. Federal Advisory Council; establishment and composition; State Advisory Councils; notice of strikes and lockouts to applicants

(a) The Secretary of Labor shall establish a Federal Advisory Council composed of men and women representing employers and employees in equal numbers and the public for the purpose of formulating policies and discussing problems relating to employment and insuring impartiality, neutrality, and freedom from political influence in the solution of such problems. Members of such council shall be selected from time to time in such manner as the Secretary shall prescribe and shall serve without compensation, but when attending meetings of the council they shall be allowed necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law for civilian employees in the executive branch of the Government. The council shall have access to all files and records of the United States Employment Service. The Secretary shall also require the organization of similar State advisory councils composed of men and women representing employers and employees in equal numbers and the public.

(b) In carrying out the provisions of this chapter, the Secretary is authorized and directed to provide for the giving of notice of strikes or lockouts to applicants before they are referred to employment.

(June 6, 1933, ch. 49, § 11, 48 Stat. 116; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, 1425; Ex. Ord. No. 9247, Sept. 17, 1942, 7 F.R. 7379; Ex. Ord. No. 9617, Sept. 19, 1945, 10 F.R. 11929; June 16, 1948, ch. 472, title I, § 101, 62 Stat. 446; 1949 Reorg. Plan No. 2, §§ 1, 3, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065.)

TRANSFER OF FUNCTIONS

For transfer of functions, powers and duties of Secretary of Labor under this chapter, insofar as relates to the prescription of personnel standards on a merit basis, to United States Civil Service Commission, see Pub. L. 91-648, § 208, set out as section 4728 of Title 42, The Public Health and Welfare.

For history of transfer of functions of the United States Employment Service to the Secretary of Labor, see Transfer of Functions notes under section 49 of this title.

The Federal Advisory Council established pursuant to this chapter was transferred to the Department of Labor by section 3 of Reorg. Plan No. 2 of 1949.

TERMINATION OF ADVISORY COUNCILS

Advisory Councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory Councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3202.

§ 49k. Rules and regulations

The Secretary of Labor is authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter.

(June 6, 1933, ch. 49, § 12, 48 Stat. 117; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, 1425; Ex. Ord. No. 9247, Sept. 17, 1942, 7 F.R. 7379; Ex. Ord. No. 9617, Sept. 19, 1945, 10 F.R. 11929; June 16, 1948, ch. 472, title I, § 101, 62 Stat. 446; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065.)

TRANSFER OF FUNCTIONS

For transfer of functions, powers and duties of Secretary of Labor under this chapter, insofar as relates to the prescription of personnel standards on a merit basis, to United States Civil Service Commission, see Pub. L. 91-648, § 208, set out as section 4728 of Title 42, The Public Health and Welfare.

For history of transfer of functions of the United States Employment Service to the Secretary of Labor, see Transfer of Functions notes under section 49 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3202.

§ 49l. Transferred

CODIFICATION

Section, act June 6, 1933, ch. 49, § 13, 48 Stat. 117, relating to mail franking privileges to employment sys-

tems, was transferred to section 338 of former Title 39, The Postal Service. Section 338 of former title 39 was repealed and reenacted as section 4152 of former Title 39, The Postal Service by Pub. L. 86-682, Sept. 2, 1960, 74 Stat. 578. Section 4152 of former title 39 was repealed and reenacted as section 3202 of Title 39, Postal Service, by Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 719.

§§ 49m, 49n. Omitted

CODIFICATION

Section 49m, Pub. L. 88-136, title I, § 101, Oct. 11, 1963, 77 Stat. 225, relating to payments to states for administrative expenses for their unemployment compensation law and their public employment offices, was from the Department of Labor Appropriation Act, 1964, and was not repeated in the Department of Labor Appropriation Act of 1965.

Section 49n, Pub. L. 88-136, title I, § 101, Oct. 11, 1963, 77 Stat. 226, relating to personnel standards, was from the Department of Labor Appropriation Act, 1964, and was not repeated in the Department of Labor Appropriation Act of 1965.

CHAPTER 4C—APPRENTICE LABOR

Sec.

50. Promotion of labor standards of apprenticeship.
50a. Publication of information; national advisory committees.
50b. Appointment of employees.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 38 sections 1652, 1701.

CHAPTER REFERRED TO IN D.C. CODE

This section is referred to in sections 36-123, 36-132 of the District of Columbia Code.

§ 50. Promotion of labor standards of apprenticeship

The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare in accordance with section 17 of title 20. For the purposes of this chapter the term "State" shall include the District of Columbia.

(Aug. 16, 1937, ch. 663, § 1, 50 Stat. 664; 1939 Reorg. Plan No. I, §§ 201, 204, 206, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, 1425; July 12, 1943, ch. 221, title VII, § 701, 57 Stat. 518; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Dec. 24, 1973, Pub. L. 93-198, title II, § 204(h), 87 Stat. 784.)

REFERENCES IN TEXT

Section 17 of title 20, referred to in text, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 643.

CODIFICATION

Words "with the National Youth Administration" were deleted from text in view of abolition of National Youth Administration by act July 12, 1943.

AMENDMENTS

1973—Pub. L. 93-198 added provision that the term "State" includes the District of Columbia.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-198 effective July 1, 1974, see section 771(b) of Pub. L. 93-198, set out in part as an Effective Date of 1973 Amendment note under section 49b of this title.

SHORT TITLE

The act of Aug. 16, 1937, ch. 663, 50 Stat. 664, which enacted this chapter, is popularly known as the "National Apprenticeship Act".

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953.

Reorg. Plan No. I of 1939, consolidated the National Youth Administration and the Office of Education, with other agencies, into the Federal Security Agency under supervision and direction of Federal Security Administrator.

§ 50a. Publication of information; national advisory committees

The Secretary of Labor may publish information relating to existing and proposed labor standards of apprenticeship, and may appoint national advisory committees to serve without compensation. Such committees shall include representatives of employers, representatives of labor, educators, and officers of other executive departments, with the consent of the head of any such department.

(Aug. 16, 1937, ch. 663, § 2, 50 Stat. 665.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 sections 1772, 1787.

§ 50b. Appointment of employees

The Secretary of Labor is authorized to appoint such employees as he may from time to time find necessary for the administration of this chapter, with regard to existing laws applicable to the appointment and compensation of employees of the United States.

(Aug. 16, 1937, ch. 663, § 3, 50 Stat. 665; July 12, 1943, ch. 221, title VII, § 701, 57 Stat. 518.)

CODIFICATION

Proviso authorizing employment of certain persons in the division of apprentice training of National Youth Administration, was omitted as obsolete in view of abolition of that agency by act July 12, 1943.

Provision formerly in this section relieved National Youth Administration, after August 16, 1937, of responsibility for promotion of labor standards of apprenticeship, and directed transfer of records and papers to Department of Labor.

CHAPTER 5—LABOR DISPUTES; MEDIATION AND INJUNCTIVE RELIEF

Sec.
51. Omitted.
52. Statutory restriction of injunctive relief.
53. "Person" or "persons" defined.

§ 51. Omitted

CODIFICATION

Section, act Mar. 4, 1913, ch. 141, § 8, 37 Stat. 738, has been omitted from the Code, as all powers and functions with respect to mediation in labor disputes vested by it in the Secretary of Labor were transferred to the Federal Mediation and Conciliation Service, an independent agency, by section 172 of this title.

§ 52. Statutory restriction of injunctive relief

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

(Oct. 15, 1914, ch. 323, § 20, 38 Stat. 738.)

CROSS REFERENCES

Applicability of this section and section 53 of this title to the insurance business, see sections 1011 to 1015 of Title 15, Commerce and Trade.

District courts to have jurisdiction to issue writs of injunction to compel compliance or restrain violation of an order of Interstate Commerce Commission, see sections 1336, 2321 et seq. of Title 28, Judiciary and Judicial Procedure.

Jurisdiction of courts in matters affecting employer and employee, see section 101 et seq. of this title.

Transporting strikebreakers, penalty, see section 1231 of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 53, 186 of this title; title 18 section 1951; title 42 section 2135; title 47 section 606.

§ 53. "Person" or "persons" defined

The word "person" or "persons" wherever used in section 52 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(Oct. 15, 1914, ch. 323, § 1, 38 Stat. 730.)

CODIFICATION

Section is based on the 3d par. of section 1(a) of the Clayton Act (Oct. 15, 1914, ch. 323, as amended by section 305(b) of Pub. L. 94-435, Sept. 30, 1976). Section 1 of the Clayton Act is classified in its entirety to section 12 of Title 15, Commerce and Trade.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 2135.

CHAPTER 6—JURISDICTION OF COURTS IN MATTERS AFFECTING EMPLOYER AND EMPLOYEE

Sec.
101. Issuance of restraining orders and injunctions; limitation; public policy.
102. Public policy in labor matters declared.
103. Nonenforceability of undertakings in conflict with public policy; "yellow dog" contracts.
104. Enumeration of specific acts not subject to restraining orders or injunctions.
105. Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive remedies.
106. Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents.
107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings.
108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief.
109. Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions.
110. Review by Court of Appeals of issuance or denial of temporary injunctions; record; precedence.
111, 112. Repealed.
113. Definitions of terms and words used in chapter.
114. Separability of provisions.
115. Repeal of conflicting acts.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 160, 178, 186 of this title; title 18 section 1951; title 42 section 2000e-5.

§ 101. Issuance of restraining orders and injunctions; limitation; public policy

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

(Mar. 23, 1932, ch. 90, § 1, 47 Stat. 70.)

Short Title

Act Mar. 23, 1932, ch. 90, 47 Stat. 70, which enacted this chapter, is popularly known as the Norris-LaGuardia Act.

Cross References

Civil actions for prevention of unlawful employment practices, provisions of this chapter not applicable to, see section 2000e-5 of Title 42, The Public Health and Welfare.

Labor-Management Relations, see section 141 et seq. of this title.

Orders of National Labor Relations Board, see section 160 of this title.

Public policy, see section 102 of this title.

Strikes subject to injunction, inapplicability of this chapter, see section 178 of this title.

Federal Rules of Civil Procedure

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 102. Public policy in labor matters declared

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

(Mar. 23, 1932, ch. 90, § 2, 47 Stat. 70.)

Section Referred to in Other Sections

This section is referred to in section 103 of this title.

§ 103. Nonenforceability of undertakings in conflict with public policy; "yellow dog" contracts

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, is declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

(Mar. 23, 1932, ch. 90, § 3, 47 Stat. 70.)

Section Referred to in Other Sections

This section is referred to in section 104 of this title.

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

(Mar. 23, 1932, ch. 90, § 4, 47 Stat. 70.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 105 of this title.

§ 105. Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive remedies

No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title.

(Mar. 23, 1932, ch. 90, § 5, 47 Stat. 71.)

§ 106. Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

(Mar. 23, 1932, ch. 90, § 6, 47 Stat. 71.)

§ 107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief then will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

(Mar. 23, 1932, ch. 90, § 7, 47 Stat. 71.)

FEDERAL RULES OF CIVIL PROCEDURE

Appeal to court of appeals, see rule 73, Title 28, Appendix, Judiciary and Judicial Procedure.

Continuation of section under Rule 73, see note by Advisory Committee under rule 73.

§ 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(Mar. 23, 1932, ch. 90, § 8, 47 Stat. 72.)

§ 109. Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

(Mar. 23, 1932, ch. 90, § 9, 47 Stat. 72.)

§ 110. Review by Court of Appeals of issuance or denial of temporary injunctions; records; precedence

Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

(Mar. 23, 1932, ch. 90, § 10, 47 Stat. 72; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals."

§§ 111, 112. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 111, act Mar. 23, 1932, ch. 90, § 11, 47 Stat. 72, related to contempts, speedy and public trial, and jury, and is now covered by section 3692 of Title 18, Crimes and Criminal Procedure.

Section 112, act Mar. 23, 1932, ch. 90, § 12, 47 Stat. 73, related to contempts and demand for retirement of sitting judge, and is now covered by rule 42 of the Federal Rules of Criminal Procedure, Title 18, Appendix, Crimes and Criminal Procedure.

§ 113. Definitions of terms and words used in chapter

When used in this chapter, and for the purposes of this chapter—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

(Mar. 23, 1932, ch. 90, § 13, 47 Stat. 73.)

§ 114. Separability of provisions

If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of this chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

(Mar. 23, 1932, ch. 90, § 14, 47 Stat. 73.)

§ 115. Repeal of conflicting acts

All acts and parts of acts in conflict with the provisions of this chapter are repealed.

(Mar. 23, 1932, ch. 90, § 15, 47 Stat. 73.)

CHAPTER 7—LABOR-MANAGEMENT RELATIONS

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
141. Short title; Congressional declaration of purpose and policy.
142. Definitions.
143. Saving provisions.
144. Separability of provisions.

SUBCHAPTER II—NATIONAL LABOR RELATIONS

151. Findings and declaration of policy.
152. Definitions.
153. National Labor Relations Board.
(a) Creation, composition, appointment, and tenure; Chairman; removal of members.

Sec.
(b) Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal.
(c) Annual reports to Congress and the President.
(d) General Counsel; appointment and tenure; powers and duties; vacancy.
154. National Labor Relations Board; eligibility for reappointment; officers and employees; payment of expenses.
155. National Labor Relations Board; principal office, conducting inquiries throughout country; participation in decisions or inquiries conducted by member.
156. Rules and regulations.
157. Right of employees as to organization, collective bargaining, etc.
158. Unfair labor practices.
(a) Unfair labor practices by employer.
(b) Unfair labor practices by labor organization.
(c) Expression of views without threat of reprisal or force or promise of benefit.
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(e) Enforceability of contract or agreement to boycott any other employer; exception.
(f) Agreement covering employees in the building and construction industry.
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(d) Petition for enforcement or review; transcript.
(e) Secret ballot; limitation of elections.
160. Prevention of unfair labor practices.
(a) Powers of Board generally.
(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable.
(c) Reduction of testimony to writing; findings and orders of Board.
(d) Modification of findings or orders prior to filing record in court.
(e) Petition to court for enforcement of order; proceedings; review of judgment.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 302, 401, 402, 1002 of this title.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 1-1412 of the District of Columbia Code.

SUBCHAPTER I—GENERAL PROVISIONS

§ 141. Short title; Congressional declaration of purpose and policy

(a) This chapter may be cited as the "Labor Management Relations Act, 1947".

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

(June 23, 1947, ch. 120, § 1, 61 Stat. 136.)

NATIONAL COMMISSION ON TECHNOLOGY, AUTOMATION, AND ECONOMIC PROGRESS

Pub. L. 88-444, Aug. 19, 1964, 78 Stat. 462, established the National Commission on Technology, Automation, and Economic Progress, to make a comprehensive and impartial study and make recommendations from time to time as needed for constructive action.

The Commission was directed to submit a final report of its findings and recommendations to the President and the Congress by January 1, 1966. The Commission ceased 30 days after submitting its final report.

EXECUTIVE ORDER No. 10918

Ex. Ord. No. 10918, Feb. 16, 1961, 26 F.R. 1427, formerly set out as a note under this section, which established the President's Advisory Committee on Labor-Management Policy, was revoked by Ex. Ord. No. 11710, Apr. 4, 1973, 38 F.R. 9071, formerly set out as a note under this section.

EXECUTIVE ORDER No. 11710

Ex. Ord. No. 11710, Apr. 4, 1973, 38 F.R. 9071, as amended by Ex. Ord. No. 11729, July 12, 1973, 38 F.R. 18863, formerly set out as a note under this section, which established the National Commission for Industrial Peace, was revoked by Ex. Ord. No. 11823, Dec. 12, 1974, 39 F.R. 43529.

EXECUTIVE ORDER No. 11809

Ex. Ord. No. 11809, Sept. 30, 1974, 39 F.R. 35565, formerly set out as a note under this section, which established the President's Labor-Management Committee, was revoked by Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, set out as a note under section 14 of the Federal Advisory Committee Act, set out in the Appendix to Title 5, Government Organization and Employees.

§ 142. Definitions

When used in this chapter—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in subchapter II of this chapter.

(June 23, 1947, ch. 120, title V, § 501, 61 Stat. 161.)

REFERENCES IN TEXT

"Subchapter II of this chapter", referred to in par. (3), was in original "the National Labor Relations Act as amended by this Act [29 U.S.C. § 141 et seq.]".

§ 143. Saving provisions

Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the

quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this chapter.

(June 23, 1947, ch. 120, title V, § 502, 61 Stat. 162.)

§ 144. Separability of provisions

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(June 23, 1947, ch. 120, title V, § 503, 61 Stat. 162.)

SUBCHAPTER II—NATIONAL LABOR RELATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 142, 186, 402 of this title; title 15 section 1014; title 18 section 1951; title 39 section 1209; title 42 section 2000e; title 43 section 1333; title 47 section 222; title 50 sections 784, 792a.

§ 151. Findings and declaration of policy

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

(July 5, 1935, ch. 372, § 1, 49 Stat. 449; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 136.)

AMENDMENTS

1947—Act June 23, 1947, amended section generally to restate the declaration of policy and to make the finding and policy of this subchapter "two-sided".

EFFECTIVE DATE OF 1947 AMENDMENT

Section 104 of act June 23, 1947, provided: "The amendments made by this title [this subchapter] shall take effect sixty days after the date of the enactment of this Act [June 23, 1947], except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title [section 153 of this title] may be exercised forthwith."

§ 152. Definitions

When used in this subchapter—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of

any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 158 of this title.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 153 of this title.

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

(July 5, 1935, ch. 372, § 2, 49 Stat. 450; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 137; July 26, 1974, Pub. L. 93-360, § 1(a), (b), 88 Stat. 395.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in pars. (2) and (3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

AMENDMENTS

1974—Par. (2). Pub. L. 93-360, § 1(a), struck out provisions which had excepted from the definition of "employer" corporations and associations operating hospitals if no part of the net earnings inured to the benefit of any private shareholder or individual.

Par. (14). Pub. L. 93-360, § 1(b), added par. (14).

1947—Act June 23, 1947, amended section generally to redefine the terms used in this subchapter and to define several new terms.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-360 effective on the thirtieth day after July 26, 1974, see section 4 of Pub. L. 93-360, set out as an Effective Date note under section 169 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

COMMUNIST ORGANIZATIONS, AND MEMBERS

Prohibitions placed on Communist organizations, and members thereof, with respect to labor, see section 781 et seq. of Title 50, War and National Defense.

particularly sections 782(4A), 784, 792a, and 841 to 844 of that title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 784.

§ 153. National Labor Relations Board

(a) Creation, composition, appointment, and tenure; Chairman; removal of members

The National Labor Relations Board (hereinafter called the "Board") created by this subchapter prior to its amendment by the Labor Management Relations Act, 1947 [29 U.S.C. 141 et seq.], is continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal

The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 159 of this title to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 159 of this title and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

(c) Annual reports to Congress and the President

The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, and an account of all moneys it has disbursed.

(d) General Counsel; appointment and tenure; powers and duties; vacancy

There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

(July 5, 1935, ch. 372, § 3, 49 Stat. 451; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 139; Sept. 14, 1959, Pub. L. 86-257, title VII, §§ 701(b), 703, 73 Stat. 542; Jan. 2, 1975, Pub. L. 93-608, § 3(3), 88 Stat. 1972.)

REFERENCES IN TEXT

The Labor Management Relations Act, 1947, referred to in subsec. (a), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to this chapter. For complete classification of this act to the Code, see section 141 of this title and Tables volume.

AMENDMENTS

1975—Subsec. (c). Pub. L. 93-608 struck out requirement that report contain the names, salaries, and duties of all employees and officers employed or supervised by the Board.

1959—Subsec. (b). Pub. L. 86-257, § 701(b), authorized the Board to delegate to its regional directors its powers under section 159 of this title to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under section 159(c) or 159(e) of this title and certify the results thereof.

Subsec. (d). Pub. L. 86-257, § 703, authorized the President to designate the officer or employee who shall act as General Counsel in the case of a vacancy in the office of the General Counsel.

1947—Act June 23, 1947, amended section generally by increasing membership from three to five, delegating its powers and duties to a quorum of any three members, and by appointing a General Counsel and outlining his powers and duties.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 707 of Pub. L. 86-257 provided that: "The amendments made by this title [to subsecs. (b) and (d) of this section and sections 158(b)(4) to (7), (e), (f), 159(c)(3), 160(l), (m) of this title] shall take effect sixty days after the date of the enactment of this Act [Sept. 14, 1959] and no provision of this title shall be deemed to make an unfair labor practice, any act which is performed prior to such effective date which

did not constitute an unfair labor practice prior thereto."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 152 of this title.

§ 154. National Labor Relations Board; eligibility for reappointment; officers and employees; payment of expenses

(a) Each member of the Board and the General Counsel of the Board shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this subchapter shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

(July 5, 1935, ch. 372, § 4, 49 Stat. 451; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 139.)

CODIFICATION

Provisions of subsec. (a) which prescribed the basic compensation of members of the Board and the General Counsel were omitted to conform to the provisions of the Executive Schedule. See sections 5314(24) and 5315(44), (63) of Title 5, Government Organization and Employees.

AMENDMENTS

1947—Act June 23, 1947, amended section generally by increasing Board members' salaries from $10,000 to $12,000 per annum, by providing a salary of $12,000 per annum for the General Counsel, omitting former subsec. (b) relating to the termination of the "Old Board", and redesignating former subsec. (c) relating to payment of expenses of Board, to be subsec. (b).

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

§ 155. National Labor Relations Board; principal office, conducting inquiries throughout country; participation in decisions or inquiries conducted by member

The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

(July 5, 1935, ch. 372, § 5, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140.)

AMENDMENTS

1947—Act June 23, 1947, reenacted section without change.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

§ 156. Rules and regulations

The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by subchapter II of chapter 5 of title 5, such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(July 5, 1935, ch. 372, § 6(a), 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140.)

CODIFICATION

Section 6 of act July 5, 1935, did not contain a subsection (b).

"Subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1947—Act June 23, 1947, provided that the rules and regulations issued by the Board should be in the manner prescribed by the Administrative Procedure Act.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 158 of this title.

§ 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor

organization as a condition of employment as authorized in section 158(a)(3) of this title.

(July 5, 1935, ch. 372, § 7, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140.)

AMENDMENTS

1947—Act June 23, 1947, restated rights of employees to bargain collectively and added provision that they have the right to refrain from joining in concerted activities with their fellow employees.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

COMMUNIST ORGANIZATIONS, AND MEMBERS

Prohibitions placed on Communist organizations, and members thereof, with respect to labor, see section 781 et seq. of Title 50, War and National Defense, particularly sections 782(4A), 784, 792a and 841 to 844 of that title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 158, 158a, 433 of this title; title 18 section 1951; title 50 section 792a.

§ 158. Unfair labor practices

(a) Unfair labor practices by employer

It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

(b) Unfair labor practices by labor organization

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or selfemployed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of

section 159 of this title: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) of this section the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this subchapter any other labor organization and a question concerning representation may not appropriately be raised under section 159(c) of this title,

(B) where within the preceding twelve months a valid election under section 159(c) of this title has been conducted, or

(C) where such picketing has been conducted without a petition under section 159(c) of this title being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 159(c)(1) of this title or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection.

(c) Expression of views without threat of reprisal or force or promise of benefit

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

(d) Obligation to bargain collectively

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such

contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2) to (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158, 159, and 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this subsection shall be modified as follows:

(A) The notice of paragraph (1) of this subsection shall be ninety days; the notice of paragraph (3) of this subsection shall be sixty days; and the contract period of paragraph (4) of this subsection shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in paragraph (3) of this subsection.

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

(e) Enforceability of contract or agreement to boycott any other employer; exception

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: *Provided*, That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection and subsection (b)(4)(B) of this section the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception.

(f) Agreements covering employees in the building and construction industry

It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 159 of this title prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training

or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to subsection (a)(3) of this section: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 159(c) or 159(e) of this title.

(g) Notification of intention to strike or picket at any health care institution

A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of subsection (d) of this section. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

(July 5, 1935, ch. 372, § 8, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140; Oct. 22, 1951, ch. 534, § 1(b), 65 Stat. 601; Sept. 14, 1959, Pub. L. 86-257, title II, § 201(e), title VII, §§ 704(a)-(c), 705(a), 73 Stat. 525, 542; July 26, 1974, Pub. L. 93-360, § 1(c)-(e), 88 Stat. 395, 396.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-360, § 1(c), (d), substituted "any notice" for "the sixty-day" and inserted ", or who engages in any strike within the appropriate period specified in subsection (g) of this section," in the loss-of-employee-status provision and added the enumeration of modifications to this subsection which are to be applied whenever the collective bargaining involves employees of a health care institution.

Subsec. (g). Pub. L. 93-360, § 1(e), added subsec. (g).

1959—Subsec. (a)(3). Pub. L. 86-257, § 201(e), eliminated words "and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 159(f), (g), (h) of this title" following "such agreement when made" in cl. (i).

Subsec. (b)(4). Pub. L. 86-257, § 704(a), among other changes, substituted "induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment" for "induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment" in cl. (i), added cl. (ii), and inserted provisions relating to agreements prohibited by subsection (e) of this section in cl. (A), the proviso relating to primary strikes and primary picketing in cl. (B), and the last proviso relating to publicity.

Subsec. (b)(7). Pub. L. 86-257, § 704(c), added subsec. (b)(7).

Subsec. (e). Pub. L. 86-257, § 704(b), added subsec. (e).

Subsec. (f). Pub. L. 86-257, § 705(a), added subsec. (f).

1951—Subsec. (a)(3). Act Oct. 22, 1951, substituted "and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159(f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement:" for "; and (ii) if, following the most recent election held as provided in section 159(e) of this title the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement:".

1947—Act June 23, 1947, amended section generally by stating what were unfair labor practices by a union as well as by an employer, and by adding provisions protecting the right of free speech for both employers and unions.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-360 effective on the thirtieth day after July 26, 1974, see section 4 of Pub. L. 93-360, set out as an Effective Date note under section 169 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Subsecs. (b)(7), (e), and (f) of this section, and amendments to subsecs. (b)(4) to (6) of this section by Pub. L. 86-257, effective sixty days after Sept. 14, 1959, see section 707 of Pub. L. 86-257, set out as an Effective Date of 1959 Amendment note under section 153 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

UNFAIR LABOR PRACTICES PRIOR TO JUNE 23, 1947

Section 102 of act June 23, 1947, provided that: "No provision of this title [this subchapter] shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this act [June 23, 1947] which did not constitute an unfair labor practice prior thereto, and the provisions of section 8(a)(3) and section 8(b)(2) of the National Labor Relations Act as amended by this title [subsecs. (a)(3) and (b)(2) of this section] shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act [June 23, 1947], or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8(3) [see subsec. (a)(3) of this section] of the National Labor Relations Act prior to the effective date of this title [sixty days after June 23, 1947] unless such agreement was renewed or extended subsequent thereto."

AGREEMENTS REQUIRING MEMBERSHIP IN A LABOR ORGANIZATION AS A CONDITION OF EMPLOYMENT

Section 705(b) of Pub. L. 86-257 provided that: "Nothing contained in the amendment made by subsection (a) [adding subsec. (f) of this section] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial Law."

CROSS REFERENCES

Actions by and against labor organizations, see section 185 of this title.

Boycotts and other unlawful combinations, right to sue, see section 187 of this title.

Federal Credit Unions, providing facilities for operations of, see section 158a of this title.

Federal employment denied persons who assert right to strike against Government, see section 7311 of Title

5, Government Organization and Employees, and section 1918 of Title 18, Crimes and Criminal Procedure.

Injunctive relief granted to Board against unfair labor practices and boycotts, see section 160 of this title.

Restrictions on payments and loans to employee representatives, see section 186 of this title.

Right to strike preserved, see section 163 of this title.

Strikes subject to injunction, see section 178 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 158a, 159, 160, 183, 187, 433 of this title; title 18 section 1951; title 50 section 792a.

§ 158a. Providing facilities for operations of Federal Credit Unions

Provision by an employer of facilities for the operations of a Federal Credit Union on the premises of such employer shall not be deemed to be intimidation, coercion, interference, restraint or discrimination within the provisions of sections 157 and 158 of this title, or acts amendatory thereof.

(Dec. 6, 1937, ch. 3, § 5, 51 Stat. 5.)

CODIFICATION

This section was not enacted either as part of the Labor Management Relations Act, 1947, which comprises this chapter, or as part of the National Labor Relations Act, which comprises this subchapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1951.

§ 159. Representatives and elections

(a) Exclusive representatives; employees' adjustment of grievances directly with employer

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) Determination of bargaining unit by Board

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) Hearings on questions affecting commerce; rules and regulations

(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section;

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 160(c) of this title.

(3) No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this subchapter in any election conducted

within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling.

(d) Petition for enforcement or review; transcript

Whenever an order of the Board made pursuant to section 160(c) of this title is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection (e) or (f) of section 160 of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e) Secret ballot; limitation of elections

(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 158(a)(3) of this title, of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

(July 5, 1935, ch. 372, § 9, 49 Stat. 453; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 143; Oct. 22, 1951, ch. 534, § 1(c), (d), 65 Stat. 601; Sept. 14, 1959, Pub. L. 86-257, title II, § 201(d), title VII, § 702, 73 Stat. 525, 542.)

AMENDMENTS

1959—Subsec. (c)(3). Pub. L. 86-257, § 702, substituted "Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this subchapter in any election conducted within twelve months after the commencement of the strike" for "Employees on strike who are not entitled to reinstatement shall not be eligible to vote."

Subsecs. (f), (g). Pub. L. 86-257, § 201(d), repealed subsecs. (f) and (g), which required unions to file their constitutions, bylaws and a report, prescribed the contents of the report and directed the filing of annual financial reports, and are now covered by section 431 of this title.

Subsec. (h). Pub. L. 86-257, § 201(d), repealed subsec. (h), which related to affidavits showing union's officers free from Communist Party affiliation or belief.

1951—Subsec. (e). Act Oct. 22, 1951, § 1(c), deleted former subdivision (1) and renumbered subdivisions (2) and (3) as (1) and (2).

Subsecs. (f) to (h). Act Oct. 22, 1951, § 1(d), deleted "No petition under section 159(c)(1) shall be entertained" wherever appearing.

1947—Act June 23, 1947, amended section generally to allow employees to carry their grievances directly to the employer, to circumscribe certain powers of the Board, to make the union file with the Secretary of Labor its constitution, bylaws, and report before being certified as a bargaining agent, to require annual reports by labor unions, and to require labor unions to file affidavits with the Board showing that none of its officers are affiliated with or believe in the Communist Party.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of subsec. (c)(3) by Pub. L. 86-257 effective sixty days after Sept. 14, 1959, see section 707 of Pub. L. 86-257, set out as an Effective Date of 1959 Amendment note under section 153 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

CERTAIN CERTIFICATIONS OF BARGAINING UNITS UNAFFECTED

Section 103 of act June 23, 1947, provided that: "No provisions of this title [this subchapter] shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act [this section] prior to the effective date of this title [sixty days after June 23, 1947] until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title [sixty days after June 23, 1947], until the end of the contract period or until one year after such date, whichever first occurs."

COMMUNIST ORGANIZATIONS, AND MEMBERS

Prohibitions placed on Communist organizations, and members thereof, with respect to labor, see section 781 et seq. of Title 50, War and National Defense, particularly sections 782(4A), 784, 792a and 841 to 844 of that title.

FEDERAL RULES OF CIVIL PROCEDURE

Application of rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 158, 161, 168 of this title; title 18 section 1951; title 50 section 792a.

§ 160. Prevention of unfair labor practices

(a) Powers of Board generally

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the

provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith.

(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided,* That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of title 28.

(c) Reduction of testimony to writing; findings and orders of Board

The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: *Provided,* That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further,* That in determining whether a complaint shall issue alleging a violation of subsection (a)(1) or (a)(2) of section 158 of this title, and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

(d) Modification of findings or orders prior to filing record in court

Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) Petition to court for enforcement of order; proceedings; review of judgment

The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board

with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) Review of final order of Board on petition to court

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(g) Institution of court proceedings as stay of Board's order

The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) Jurisdiction of courts unaffected by limitations prescribed in chapter 6 of this title

When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by chapter 6 of this title.

(i) Expeditious hearings on petitions

Petitions filed under this subchapter shall be heard expeditiously, and if possible within ten days after they have been docketed.

(j) Injunctions

The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(k) Hearings on jurisdictional strikes

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 158(b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

***(l)* Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process**

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 158(b) of this title, or section 158(e) of this title or section 158(b)(7) of this title, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction

to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further,* That such officer or regional attorney shall not apply for any restraining order under section 158(b)(7) of this title if a charge against the employer under section 158(a)(2) of this title has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 158(b)(4)(D) of this title.

(m) Priority of cases.

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 158 of this title, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (*l*) of this section.

(July 5, 1935, ch. 372, § 10, 49 Stat. 453; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 146; June 25, 1948, ch. 646, § 32(a), (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85-791, § 13, 72 Stat. 945; Sept. 14, 1959, Pub. L. 86-257, title VII, §§ 704(d), 706, 73 Stat. 544.)

REFERENCES IN TEXT

The rules of evidence applicable in the district courts of the United States, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The rules of civil procedure for the district courts of the United States, referred to in subsec. (b), are set out in the Appendix to Title 28.

Chapter 6 (§ 101 et seq.) of this title, referred to in subsec. (h), is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, popularly known as the Norris-LaGuardia Act.

CODIFICATION

In subsec. (b), "section 2072 of title 28" was substituted for "the Act of June 19, 1934 (U.S.C., title 28, secs. 723-B, 723-C)" on authority of Act June 25, 1948, ch. 646, 62 Stat. 869, section 1 of which enacted Title 28, Judiciary and Judicial Procedure.

In subsec. (f), "United States court of appeals" was substituted for "circuit court of appeals of the United States" on authority of act June 25, 1948, as amended by act May 24, 1949.

As originally enacted subsecs. (j) and (*l*) contained references to the District Court of the United States for the District of Columbia. Act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia". However, the words "United States District Court for the District of Columbia" have now been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which states that "the District of Columbia constitutes one judicial district".

AMENDMENTS

1959—Subsec. (*l*). Pub. L. 86-257, § 704(d), included unfair labor practices within the meaning of sections 158(e) and 158(b)(7) of this title, and inserted the proviso prohibiting the officer or regional attorney from applying for any restraining order under section 158(b)(7) of this title if a charge against the employer under section 158(a)(2) of this title has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue.

Subsec. (m). Pub. L. 86-257, § 706, added subsec. (m).

1958—Subsec. (d). Pub. L. 85-791, § 13(a), eliminated "a transcript of" following "until".

Subsec. (e). Pub. L. 85-791, § 13(b), eliminated "(including the United States Court of Appeals for the District of Columbia)" preceding ", or if all the courts", and substituted "file in the court the record in the proceedings, as provided in section 2112 of title 28" for "certify and file in the court a transcript of the entire record in the proceedings including the pleadings and testimony upon which such order was entered and the findings and order of the Board" in the first sentence, in second sentence substituted "the filing of such petition" for "such filing of" and eliminated "upon the pleadings, testimony and proceedings set forth in such transcript" following "make and enter", in fifth sentence substituted "member" for "members" following "before the Board, its", and substituted "record" for "transcript", and in seventh sentence, substituted "Upon the filing of the record with it the" for "The", and "section 1254 of title 28" for "sections 346 and 347 of title 28".

Subsec. (f). Pub. L. 85-791, § 13(c), substituted "transmitted by the clerk of the court to" for "served upon" and "the record in the proceeding, certified by the Board, as provided in section 2112 of title 28" for "a transcript of the entire record in the proceeding, certified by the Board including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board" in the second sentence, and in third sentence substituted "the filing of such petition," for "such filing", and eliminated "exclusive" preceding "jurisdiction".

1947—Act June 23, 1947, amended section generally and added subsecs. (j) to (*l*) which gives the Board general power to petition district court for temporary relief or restraining order, directs Board to hear and determine jurisdictional strikes, and to investigate boycotts and strikes to force recognition of an uncertified labor union and to petition district court for injunctive relief.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-257 effective sixty days after Sept. 14, 1959, see section 707 of Pub. L. 86-257, set out as an Effective Date of 1959 Amendment note under section 153 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

COMMUNIST ORGANIZATIONS, AND MEMBERS

Prohibitions placed on Communist organizations and members thereof, with respect to labor, see section 781 et seq. of Title 50, War and National Defense, particularly sections 782(4A), 784, 792a and 841 to 844 of that title.

FEDERAL RULES OF CIVIL PROCEDURE

Application of rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 158, 159, 161, 168 of this title; title 18 section 1951; title 50 section 792a.

§ 161. Investigatory powers of Board

For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 159 and 160 of this title—

(1) Documentary evidence; summoning witnesses and taking testimony

The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceedings or investigation requested in such application. Within five days after the service of a subpena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) Court aid in compelling production of evidence and attendance of witnesses

In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) Repealed. Pub. L. 91–452, title II, § 234, Oct. 15, 1970, 84 Stat. 930

(4) Process, service and return; fees of witnesses

Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) Process, where served

All process of any court to which application may be made under this subchapter may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) Information and assistance from departments

The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

(July 5, 1935, ch. 372, § 11, 49 Stat. 455; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 150; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 15, 1970, Pub. L. 91–452, title II, § 234, 84 Stat. 930.)

CODIFICATION

The original text of par. (2) contained a reference to the District Court of the United States for the District of Columbia. Act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia". However, the words "United States District Court for the District of Columbia" have now been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which states that "the District of Columbia constitutes one judicial district".

AMENDMENTS

1970—Par. (3). Pub. L. 91-452 struck out par. (3) which related to the immunity from prosecution of

any individual compelled to testify or produce evidence after claiming his privilege against self-incrimination.

1947—Act June 23, 1947, restated the section with the addition of provisions requiring the issuance of subpenas as a matter of course on the request of any party.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

SAVINGS PROVISIONS

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Subpena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 661 of this title; title 18 section 1951; title 42 section 2000e-9.

§ 162. Offenses and penalties

Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this subchapter shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

(July 5, 1935, ch. 372, § 12, 49 Stat. 456; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 151.)

AMENDMENTS

1947—Act June 23, 1947, reenacted section without change.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1951.

§ 163. Right to strike preserved

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

(July 5, 1935, ch. 372, § 13, 49 Stat. 457; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 151.)

AMENDMENTS

1947—Act June 23, 1947, amended section so as to provide that except as specifically provided for in this subchapter nothing shall interfere with or diminish the right to strike and that nothing was to be construed to affect the limitations or qualifications on the right to strike, thus recognizing that the right to strike is not an unlimited and unqualified right.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1951.

§ 164. Construction of provisions

(a) Supervisors as union members

Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) Agreements requiring union membership in violation of State law

Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

(c) Power of Board to decline jurisdiction of labor disputes; assertion of jurisdiction by State and Territorial courts

(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to subchapter II of chapter 5 of title 5, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

(July 5, 1935, ch. 372, § 14, 49 Stat. 457; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 151; Sept. 14, 1959, Pub. L. 86-257, title VII, § 701(a), 73 Stat. 541.)

CODIFICATION

"Subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1959—Subsec. (c). Pub. L. 86-257 added subsec. (c).

1947—Act June 23, 1947, amended section generally by inserting new subject matter. Section formerly referred to conflict of laws and is now covered by section 165 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1951.

§ 165. Conflict of laws

Wherever the application of the provisions of section 672 of title 11 conflicts with the application of the provisions of this subchapter, this subchapter shall prevail: *Provided*, That in any situation where the provisions of this subchapter cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

(July 5, 1935, ch. 372, § 15, 49 Stat. 457; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 151.)

AMENDMENTS

1947—Act June 23, 1947, amended section generally by inserting new subject matter which was formerly covered by section 164 of this title. Section formerly referred to separability provisions and is now covered by section 166 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1951.

§ 166. Separability of provisions

If any provision of this subchapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this subchapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(July 5, 1935, ch. 372, § 16, 49 Stat. 457; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 151.)

AMENDMENTS

1947—Act June 23, 1947, amended section generally by inserting new subject matter which was formerly covered by section 165 of this title. Section formerly referred to short title of chapter and is now covered by section 167 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1951.

§ 167. Short title of subchapter

This subchapter may be cited as the "National Labor Relations Act".

(July 5, 1935, ch. 372, § 17, as added June 23, 1947, ch. 120, title I, § 101, 61 Stat. 152.)

EFFECTIVE DATE

Effective date of act June 23, 1947, see section 104 of act June 23, 1947, set out as an Effective Date of 1947 Amendment note under section 151 of this title.

§ 168. Validation of certificates and other Board actions

No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of section 159 of this title, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 159(f), (g), or (h) of this title prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 159(f), (g), or (h) of this title prior to November 7, 1947: *Provided*, That no liability shall be imposed under any provision of this chapter upon any person for failure to honor any election or certificate referred to above, prior to October 22, 1951: *Provided, however*, That this proviso shall not have the effect of setting aside or in any way affecting judgments or decrees heretofore entered under section 160(e) or (f) of this title and which have become final.

(July 5, 1935, ch. 372, § 18, as added Oct. 22, 1951, ch. 534, § 1(a), 65 Stat. 601.)

REFERENCES IN TEXT

Section 159(f), (g), or (h) of this title, referred to in the text, was repealed by Pub. L. 86-257, title II, § 201(d), 73 Stat. 525. See section 431 of this title.

§ 169. Individuals with religious convictions

Any employee of a health care institution who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required, in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious charitable fund exempt from taxation under section 501(c)(3) of title 26, chosen by such employee from a list of at least three such funds, designated in a contract between such institution and a labor organization, or if the contract fails to designate such funds, then to any such fund chosen by the employee.

(July 5, 1935, ch. 372, § 19, as added July 26, 1974, Pub. L. 93-360, § 3, 88 Stat. 397.)

EFFECTIVE DATE

Section 4 of Pub. L. 93-360 provided that: "The amendments made by this Act [enacting sections 169 and 183 of this title and amending sections 152 and 158 of this title] shall become effective on the thirtieth day after its date of enactment [July 26, 1974]."

SUBCHAPTER III—CONCILIATION OF LABOR DISPUTES; NATIONAL EMERGENCIES

§ 171. Declaration of purpose and policy

It is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

(June 23, 1947, ch. 120, title II, § 201, 61 Stat. 152.)

Ex. Ord. No. 11482. Construction Industry Collective Bargaining Commission

Ex. Ord. No. 11482, Sept. 22, 1969, 34 F.R. 14723, provided:

Whereas, the national interest requires a steady level of construction activity; and

Whereas, labor-management relations in the construction industry reflect numerous signs of strife and tensions and the national interest requires an improvement in the procedures and performance of collective bargaining in this vital sector; and

Whereas, the continuation of these problems tend to encourage widespread public demand for governmental regulation and controls; and

Whereas, the achievement of greater stability in the flow of construction volume is essential; and

Whereas, the Federal government and local and State governments, being major industry consumers, have a substantial interest in construction activity; and

Whereas, the labor and management organizations in the construction industry recognize that industrial strife tends to disrupt construction operations and adversely to affect other sectors, including the public; and

Whereas, the Commission hereinafter provided for is designed to develop voluntary tripartite procedures to be followed in the settlement of disputes over the terms of collective bargaining agreements in the construction industry involving the standard labor and management organizations, and to engage in such related activities as will facilitate industrial peace and stability in the construction industry but the establishment of the Commission is not intended to provide for compulsory arbitration or for any compulsory limitation on the right to strike or lockout;

Now, Therefore, by virtue of the authority vested in me as the President of the United States, it is ordered as follows:

Section 1. There is hereby established a Construction Industry Collective Bargaining Commission (hereinafter referred to as the Commission). The Commission shall be composed of twelve members as follows: (1) The Secretary of Labor, who is hereby designated as the Chairman of the Commission, (2) the Director of the Federal Mediation and Conciliation Service, and (3) the following members, all of whom shall be appointed by the President: (i) two members representative of the public, (ii) four representatives of labor organizations in the construction industry, and (iii) four representatives of employers in that industry. Representatives of the labor organizations and the employers shall be appointed after consultation with various national labor organizations and contractor associations in the construction industry. Alternate members also may be designated.

Sec. 2. The Commission shall have an Executive Director, designated by the Chairman, who shall assist the Chairman and the Commission in the performance of their functions as they may direct. The staff to be made available to the Commission shall include a person drawn from the Federal Mediation and Conciliation Service to assist in coordination of mediation activities of the Service and the work of the Commission, a person from Department of Labor staff engaged in the administration of the Davis-Bacon Act [sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works], and such research and other personnel as may be necessary.

Sec. 3. The general objectives of the Commission shall include, but need not be limited to, the following:

(a) To study relevant private and public policies; (i) to upgrade the skills of, and to increase the labor force engaged in the construction industry and improve training procedures; (ii) to reduce the instability of demand for construction labor, and (iii) to provide a greater number of weeks of work per year to those engaged in the industry.

(b) To strengthen the role of the national labor organizations and the national associations of contractors in the dispute settlement process, and to enhance their responsibility for the results of collective bargaining in the industry.

(c) To establish more effective machinery for the resolution of disputes over the terms of collective bargaining agreements which at the same time recognizes the interests of each branch of the industry and preserves existing procedures that have been effective.

(d) To identify means to improve and adapt the structure of collective bargaining in the industry to meet the challenges of technological innovation and changing demands.

Sec. 4. The Commission is authorized to conduct studies and to make general recommendations respecting any problems relating to collective bargaining in the construction industry which may be presented to it from labor, management, or the public representatives. Such problems may include, but need not be limited to, the training and development of manpower, instability, the improvement of productivity and technology, the improvement of the mobility of the labor force, the portability of pensions, and job security. The Commission is also authorized to make general recommendations to the parties in the industry respecting collective bargaining practices and procedures.

Sec. 5. (a) The Commission is authorized to intercede in any labor dispute in the construction industry whenever in its judgment the labor dispute over the terms or application of the collective bargaining agreement is likely to have a significant impact on construction activity in a locality, or in other localities. The Commission is further authorized to develop a procedure whereby, as a matter of national interest, a 30-day period may be observed during which mediation and related activities may take place without the occurrence of a strike or lockout or other change in

terms or conditions of employment except by mutual agreement of the parties. The Commission or a panel designated by the Commission may, with the assistance of national labor organizations and national contractor associations where appropriate, seek to mediate such dispute, or make an investigation of the facts of the dispute and make such recommendations to the parties for the resolution thereof as it determines appropriate. In making any such recommendations, the Commission shall give due regard to the area and craft differentials, to the consequences of settlements on employment and on the economy of an area, and to other factors customarily considered by parties in collective bargaining.

(b) The Commission may hold such hearings, take such evidence, and gather such facts as it deems necessary and appropriate hereunder. Such hearings may include oral presentations by the parties and participation by such other persons from the area, or otherwise, as the Commission deems would facilitate the discharge of its responsibilities under this order.

SEC. 6. The Commission is authorized to issue such rules and regulations, and to adopt such procedures governing its affairs, including the conduct of its disputes settlement functions, as shall be necessary and appropriate to effectuate the objectives of this order. The Commission is authorized to establish panels composed of members of the Commission, alternates, or others, as may be designated by the Commission. Such panels may be authorized to act for the Commission and to exercise the authority of the Commission in such matters as the Commission may delegate or direct.

SEC. 7. (a) Expenses of the Commission shall be paid from such appropriations to the Department of Labor and the Federal Mediation and Conciliation Service as may be available therefor.

(b) All departments and agencies of the United States are authorized and directed to cooperate with the Commission in the effectuation of the purposes of this order to the extent authorized by law.

(c) Members of the Commission who are officers or employees of the Federal Government shall receive no additional compensation by reason of this order. Other members of the Commission shall be entitled to receive compensation and travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the government service employed intermittently (5 U.S.C. 3109, 5703).

SEC. 8. (a) As may be appropriate, the Commission shall consult with the Cabinet Committee on Construction and individually with heads of executive departments or agencies having responsibilities for programs affecting the construction industry. The Commission is authorized to request the heads of the departments and agencies concerned to establish advisory panels from representatives of such executive departments and agencies as may be necessary to carry out the objectives of this order.

(b) The Bureau of the Budget [now the Office of Management and Budget] is authorized to provide to the Commission information regarding Federal or Federally assisted construction.

SEC. 9. The Commission shall make reports to the President from time to time on its activities and its progress in achieving the objectives and purposes of this order. The reports shall include such recommendations relative to the activities of the Commission as it shall deem appropriate.

RICHARD NIXON.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970, redesignated the Bureau of the Budget as the Office of Management and Budget.

EX. ORD. NO. 11849. COLLECTIVE BARGAINING COMMITTEE IN CONSTRUCTION

Ex. Ord. No. 11849, Apr. 1, 1975, 40 F.R. 14887, provided:

The President's Labor-Management Committee established by Executive Order No. 11809 [set out as a note under section 141 of this title] was authorized to "encourage the establishment of labor-management committees (bipartite or tripartite) in particular sectors or industries as may be appropriate." That Committee expressed the view that a committee should appropriately be established in the construction industry.

An interim labor-management committee on collective bargaining problems in construction, representative of labor and management organizations involved in collective bargaining in the industry, has met regularly since November 1974 to explore the feasibility and details of a continuing committee.

The recommendations of the interim labor-management committee have been ratified by the standard national labor and management organizations engaged in collective bargaining in the industry, and their representatives have been authorized to participate and serve on such a committee.

This Order is required to establish an arrangement and machinery for an operating structure with a minimum of government interference in the futherance of more effective collective bargaining in the industry.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America, it is ordered as follows:

Section 1. There is hereby established the Collective Bargaining Committee in Construction (hereinafter referred to as the Committee). The Committee shall consist of ten labor members and ten management members appointed by the President. The Secretary of Labor or his designee shall serve as Chairman. The Director of the Federal Mediation and Conciliation Service shall participate as a member of the Committee. Additional alternate members may be appointed by the Secretary of Labor.

Sec. 2. (a). The Committee shall facilitate the collective bargaining process at local and area levels, assist in providing a data bank of wage and benefit information, encourage peaceful negotiation of responsible local and area agreements, facilitate local coordinated bargaining and larger area bargaining wherever appropriate, and seek to resolve particular disputes that cannot otherwise be reasonably resolved.

(b) In the furtherance of these objectives the Committee is authorized to hold conferences; and if it deems appropriate, in particular collective bargaining disputes or in groups of related disputes, the Committee may make recommendations to the appropriate standard organizations which are party to collective bargaining in the construction industry concerning the provisions of agreements or the structure of collective bargaining.

(c) The Committee shall promote more effective machinery for the resolution of disputes over the terms of collective bargaining agreements which recognizes the interests of each branch of the industry and preserves existing procedures that have been effective.

Sec. 3. In addition to the foregoing tasks, the Committee shall also:

(a) Review and analyze construction manpower under collective bargaining agreements, including regional requirements and availabilities of respective skills for projected needs, and the effectiveness of training programs, and, if appropriate, maintain a continuing central data file of manpower requirements and availabilities by major areas of the country;

(b) Consider measures to reduce the instability of demand for construction labor and to provide more weeks of work per year;

(c) Take measures to increase productivity in the industry under collective bargaining agreements;

(d) Improve further the current wage and benefit data base for construction to facilitate collective bargaining at local and regional levels and the role of the national organizations in dispute settlements;

(e) Consider the problems for collective bargaining arising from the activities of separate Federal government agencies as they affect the construction industry;

(f) Consider from time to time such problems in the construction industry under collective bargaining as it may deem appropriate; and

(g) Encourage the establishment of comparable joint regional or local committees on an area basis to the extent it deems appropriate.

Sec. 4. In carrying out its functions, the Committee shall give consideration to long term developments in the construction industry under collective bargaining agreements and shall seek to develop appropriate policies in the national interest.

Sec. 5. All executive departments and agencies of the Federal government are authorized and directed to cooperate with the Committee and to furnish such information, personnel and assistance, not inconsistent with law, as it may require in the performance of its duties.

Sec. 6. The Committee shall make periodic reports to the President. Standard national labor and management organizations are encouraged to review the operation of the Committee and report to the President annually on the extent to which the purposes of this Order are being achieved.

GERALD R. FORD.

§ 172. Federal Mediation and Conciliation Service

(a) Creation; appointment of Director

There is created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service", except that for sixty days after June 23, 1947, such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall not engage in any other business, vocation, or employment.

(b) Appointment of officers and employees; expenditures for supplies, facilities, and services

The Director is authorized, subject to the civil service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5, and may, without regard to the provisions of the civil service laws, appoint such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

(c) Principal and regional offices; delegation of authority by Director; annual report to Congress

The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this chapter to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) Transfer of all mediation and conciliation services to Service; effective date; pending proceedings unaffected

All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 51 of this title, and all functions of the United States Conciliation Service under any other law are transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after June 23, 1947. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

(June 23, 1947, ch. 120, title II, § 202, 61 Stat. 153; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (b), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

Section 51 of this title, referred to in subsec. (d), has been omitted from the Code, as all powers and functions vested by it in the Secretary of Labor were transferred to the Federal Mediation and Conciliation Service, an independent agency, by section 172(d) of this title.

CODIFICATION

Provisions of subsec. (a) which prescribed the basic annual compensation of the Director were omitted to conform to the provisions of the Executive Schedule. See section 5314 of Title 5, Government Organization and Employees.

In subsec. (b), "chapter 51 and subchapter III of chapter 53 of title 5" were substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5.

Provisions of subsec. (b) that authorized the Director to fix the compensation of conciliators and mediators without regard to the Classification Act of 1923, as amended, have been omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in this section because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5

authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

AMENDMENTS

1949—Subsec. (b). Act Oct. 28, 1949, substituted the "Classification Act of 1949" for the "Classification Act of 1923".

REPEALS

Act Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

§ 173. Functions of Service

(a) Settlement of disputes through conciliation and mediation

It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) Intervention on motion of Service or request of parties; avoidance of mediation of minor disputes

The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interuption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) Settlement of disputes by other means upon failure of conciliation

If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this chapter.

(d) Use of conciliation and mediation services as last resort

Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

(June 23, 1947, ch. 120, title II, § 203, 61 Stat. 153.)

§ 174. Co-equal obligations of employees, their representatives, and management to minimize labor disputes

(a)[1] In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this chapter for the purpose of aiding in a settlement of the dispute.

(June 23, 1947, ch. 120, title II, § 204, 61 Stat. 154.)

§ 175. National Labor-Management Panel; creation and composition; appointment, tenure, and compensation; duties

(a) There is created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

(June 23, 1947, ch. 120, title II, § 205, 61 Stat. 154.)

§ 176. National emergencies; appointment of board of inquiry by President; report; contents; filing with Service

Whenever in the opinion of the President of the United States, a threatened or actual strike

[1] Section was enacted without a subsec. (b).

or lockout affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

(June 23, 1947, ch. 120, title II, § 206, 61 Stat. 155.)

EX. ORD. NO. 11621. CREATION OF BOARD OF INQUIRY

Ex. Ord. No. 11621, Oct. 4, 1971, 36 F.R. 19435, as amended by Ex. Ord. No. 11622, Oct. 5, 1971, 36 F.R. 19491, provided:

WHEREAS, there exist certain labor disputes between employers (or associations by which such employers are represented in collective bargaining conferences) who are (1) steamship companies operating ships or employed as agents for ships engaged in service from or to Atlantic, Pacific, Great Lakes, and Gulf Coast ports of the United States, or from or to other ports of the United States or its territories or possessions, (2) contracting stevedores, (3) contracting marine carpenters, (4) lighterage operators, or (5) other employers engaged in related or associated pier activities, and certain of their employees represented by the International Longshoremen's Association, AFL-CIO; the International Association of Machinists and Aerospace Workers, AFL-CIO and District Lodge 94 and Local Lodge 1484 thereof; and the International Longshoremen's and Warehousemen's Union; and

WHEREAS, such disputes have resulted in strikes on Pacific, Atlantic, Great Lakes, and Gulf Coast ports of the United States which if permitted to continue will, in my opinion, affect a substantial part of the maritime industry, and industry engaged in trade, commerce, transportation, transmission, or communication among the several States and with foreign nations, and will imperil the national health and safety.

NOW, THEREFORE, by virtue of the authority vested in me by Section 206 of the Labor-Management Relations Act, 1947 (61 Stat. 155; 29 U.S.C. 176), I hereby create a Board of Inquiry, consisting of:

J. Keith Mann, Chairman
Paul Hanlon
Jacob Seidenberg
Rolf Valtin

as Members, whom I hereby appoint to inquire into the issues involved in such disputes.

The Board shall have powers and duties as set forth in Title II of such Act [section 171 et seq. of this title]. The Board shall report to the President in accordance with the provisions of Section 206 of such Act [this section] on or before October 6, 1971.

Upon the submission of its report, the Board shall continue in existence to perform such other functions as may be required under such Act.

RICHARD NIXON.

§ 177. Board of Inquiry

(a) Composition

A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Compensation

Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) Powers of discovery

For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the powers and duties of such board.

(June 23, 1947, ch. 120, title II, § 207, 61 Stat. 155.)

§ 178. Injunctions during national emergency

(a) Petition to district court by Attorney General on direction of President

Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

(b) Inapplicability of chapter 6

In any case, the provisions of chapter 6 of this title shall not be applicable.

(c) Review of orders

The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in section 1254 of title 28.

(June 23, 1947, ch. 120, title II, § 208, 61 Stat. 155; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

REFERENCES IN TEXT

Chapter 6 (§ 101 et seq.) of this title, referred to in subsec. (b) is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, popularly known as the Norris-LaGuardia Act.

CODIFICATION

In subsec. (c), "court of appeals" was substituted for "circuit court of appeals" on authority of act June 25, 1948, as amended by act May 24, 1949. The words "United States" immediately preceding "Court of appeals" were inserted on authority of section 43 of Title 28, Judiciary and Judicial Procedure.

In subsec. (c), "section 1254 of title 28" was substituted for "sections 239 and 240 of the Judicial Code, as amended (U.S.C. title 28, secs. 346 and 347)" on au-

thority of act June 25, 1948, ch. 646, 62 Stat. 869, section 1 of which enacted Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 179 of this title.

§ 179. Injunctions during national emergency; adjustment efforts by parties during injunction period

(a) Assistance of Service; acceptance of Service's proposed settlement

Whenever a district court has issued an order under section 178 of this title enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this chapter. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Reconvening of board of inquiry; report by board; contents; secret ballot of employees by National Labor Relations Board; certification of results to Attorney General

Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

(June 23, 1947, ch. 120, title II, § 209, 61 Stat. 155.)

§ 180. Discharge of injunction upon certification of results of election or settlement; report to Congress

Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

(June 23, 1947, ch. 120, title II, § 210, 61 Stat. 156.)

§ 181. Compilation of collective bargaining agreements, etc.; use of data

(a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

(June 23, 1947, ch. 120, title II, § 211, 61 Stat. 156.)

§ 182. Exemption of Railway Labor Act from subchapter

The provisions of this subchapter shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time.

(June 23, 1947, ch. 120, title II, § 212, 61 Stat. 156.)

REFERENCES IN TEXT

The Railway Labor Act, as amended, referred to in text, is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

§ 183. Conciliation of labor disputes in the health care industry

(a) Establishment of Boards of Inquiry; membership

If, in the opinion of the Director of the Federal Mediation and Conciliation Service, a threatened or actual strike or lockout affecting a health care institution will, if permitted to occur or to continue, substantially interrupt the delivery of health care in the locality concerned, the Director may further assist in the resolution of the impasse by establishing within 30 days after the notice to the Federal Mediation and Conciliation Service under clause (A) of the last sentence of section 158(d) of this title (which is required by clause (3) of such section 158(d) of this title), or within 10 days after the notice under clause (B), an impartial Board of Inquiry to investigate the issues involved in the dispute and to make a written report thereon to the parties within fifteen (15) days after the establishment of such a Board. The written report shall contain the findings of fact together with the Board's recommendations for settling the dispute, with the objective of achieving a prompt, peaceful and just settlement of the dispute. Each such Board shall be composed of such number of individuals as the Director may deem desirable. No member ap-

pointed under this section shall have any interest or involvement in the health care institutions or the employee organizations involved in the dispute.

(b) Compensation of members of Boards of Inquiry

(1) Members of any board established under this section who are otherwise employed by the Federal Government shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out its duties under this section.

(2) Members of any board established under this section who are not subject to paragraph (1) shall receive compensation at a rate prescribed by the Director but not to exceed the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, including travel for each day they are engaged in the performance of their duties under this section and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(c) Maintenance of status quo

After the establishment of a board under subsection (a) of this section and for 15 days after any such board has issued its report, no change in the status quo in effect prior to the expiration of the contract in the case of negotiations for a contract renewal, or in effect prior to the time of the impasse in the case of an initial beginning negotiation, except by agreement, shall be made by the parties to the controversy.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(June 23, 1947, ch. 120, title II, § 213, as added July 26, 1974, Pub. L. 93-360, § 2, 88 Stat. 396.)

EFFECTIVE DATE

Section effective on the thirtieth day after July 26, 1974, see section 4 of Pub. L. 93-360, set out as an Effective Date note under section 169 of this title.

SUBCHAPTER IV—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process

The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency

For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(June 23, 1947, ch. 120, title III, § 301, 61 Stat. 156.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 187 of this title.

§ 186. Restrictions on financial transactions

(a) Payment or lending, etc., of money by employer or agent to employees, representatives, or labor organizations

It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties

as a representative of employees or as such officer or employee of such labor organization.

(b) Request, demand, etc., for money or other thing of value

(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in part II of the Interstate Commerce Act [49 U.S.C. 301 et seq.]) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: *Provided,* That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(c) Exceptions

The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided,* That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: *Provided,* That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: *Provided,* That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: *Provided further,* That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; or (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: *Provided,* That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: *Provided further,* That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or

agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under subchapter II of this chapter or this chapter; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.].

(d) Penalty for violations

Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) Jurisdiction of courts

The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of title 15 and section 52 of this title, and the provisions of chapter 6 of this title.

(f) Effective date of provisions

This section shall not apply to any contract in force on June 23, 1947, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Contributions to trust funds

Compliance with the restrictions contained in subsection (c)(5)(B) of this section upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) of this section be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

(June 23, 1947, ch. 120, title III, § 302, 61 Stat. 157; Sept. 14, 1959, Pub. L. 86-257, title V, § 505, 73 Stat. 537; Oct. 14, 1969, Pub. L. 91-86, 83 Stat. 133; Aug. 15, 1973, Pub. L. 93-95, 87 Stat. 314.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (b)(2), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended. Part II of the Interstate Commerce Act was added by Aug. 9, 1935, ch. 498, 49 Stat. 543, and is classified generally to chapter 8 (§ 301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of Title 49 and Tables volume.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (c), is Pub. L. 86-257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

Section 381 of title 28, referred to in subsec. (e), was omitted from the revision of Title 28 by act June 25, 1948, ch. 646, 62 Stat. 869, and is now covered by rule 65 of Federal Rules of Civil Procedure.

Chapter 6 (§ 101 et seq.) of this title, referred to in subsec. (e), is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, popularly known as the Norris-LaGuardia Act.

AMENDMENTS

1973—Subsec. (c). Pub. L. 93-95 added cl. (8).

1969—Subsec. (c). Pub. L. 91-86 added cl. (7).

1959—Subsec. (a). Pub. L. 86-257 substituted provisions set forth above for provisions that read: "It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce."

Subsec. (b). Pub. L. 86-257 substituted provisions set forth above for provisions that read: "It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value."

Subsec. (c). Pub. L. 86-257 substituted "in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer" for "with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer" in cl. (1), and added cl. (6).

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of violations of this section dealing with restrictions on payments and loans to labor organizations, see section 2516 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 432, 433, 523, 1002, 1111 of this title; title 18 section 2516; title 33 section 917.

§ 187. Unlawful activities or conduct; right to sue; jurisdiction; limitations; damages

(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b)(4) of this title.

(b) Whoever shall be injured in his business or property by reason or[1] any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

(June 23, 1947, ch. 120, title III, § 303, 61 Stat. 158; Sept. 14, 1959, Pub. L. 86-257, title VII, § 704(e), 73 Stat. 545.)

AMENDMENTS

1959—Subsec. (a). Pub. L. 86-257 eliminated provisions which specified particular practices that were unlawful, and inserted a reference to practices defined in section 158(b)(4) of this title, which section defines

[1] So in original. Probably should read "of".

the unfair labor practices formerly enumerated in this subsection.

§ 188. Repealed. Aug. 9, 1955, ch. 690, § 4(3), 69 Stat. 625

Section, act June 23, 1947, ch. 120, title III, § 305, 61 Stat. 160, forbade striking by Government employees, required discharge of striking employee and forfeiture of his civil-service status, and made him ineligible for employment for three years, and is now covered by sections 3333 and 7311 of Title 5, Government Organization and Employees, and section 1918 of Title 18, Crimes and Criminal Procedure.

SUBCHAPTER V—CONGRESSIONAL JOINT COMMITTEE ON LABOR-MANAGEMENT RELATIONS

§§ 191 to 197. Omitted

CODIFICATION

Section 191, act June 23, 1947, ch. 120, title IV, § 401, 61 Stat. 160, relating to the establishment and composition of the Joint Committee on Labor-Management Relations, was omitted from the Code as executed.

Section 192, act June 23, 1947, ch. 120, title IV, § 402, 61 Stat. 160, relating to a study by the committee of the entire field of labor-management relations, was omitted from the Code as executed.

Section 193, acts June 23, 1947, ch. 120, title IV, § 403, 61 Stat. 160; Aug. 10, 1948, ch. 833, 62 Stat. 1286, relating to a final report to Congress to be submitted no later than March 1, 1949, was omitted from the Code as executed.

Section 194, act June 23, 1947, ch. 120, title IV, § 404, 61 Stat. 161, relating to the employment and compensation of experts and other personnel, was omitted from the Code as executed.

Section 195, act June 23, 1947, ch. 120, title IV, § 405, 61 Stat. 161, relating to hearings, calling of witnesses, production of evidence, was omitted from the Code as executed.

Section 196, act June 23, 1947, ch. 120, title IV, § 406, 61 Stat. 161, relating to the reimbursement of committee members for expenses, was omitted from the Code as executed.

Section 197, act June 23, 1947, ch. 120, title IV, § 407, 61 Stat. 161, relating to appropriation of funds, was omitted from the Code as executed.

CHAPTER 8—FAIR LABOR STANDARDS

Sec.

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 251 to 262, 848, 881 of this title; title 15 section 1014; title 38 section 618; title 41 section 355; title 42 section 3056.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in sections 1-1412, 36-203, 36-404 of the District of Columbia Code.

§ 201. Short title

This chapter may be cited as the "Fair Labor Standards Act of 1938".

(June 25, 1938, ch. 676, § 1, 52 Stat. 1060.)

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-259, § 1(a), Apr. 8, 1974, 88 Stat. 55, provided that: "This Act [which enacted section 633a of this title, amended sections 202 to 208, 210, 212 to 214, 216, 255, 260, 630, and 634 of this title, and enacted provisions set out as notes under sections 201, 202, 206, 207, 213, and 621 of this title] may be cited as the 'Fair Labor Standards Amendments of 1974'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-601, § 1, Sept. 23, 1966, 80 Stat. 830, provided: "That this Act [amending sections 203, 206, 207, 213, 214, 216, 218, and 255 of this title, and enacting provisions set out as notes under sections 207 and 214 of this title, section 1082 of former Title 5, Executive Departments and Government Officers and Employees, and section 2000e-14 of Title 42, The Public Health and Welfare] may be cited as the 'Fair Labor Standards Amendments of 1966'."

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88-38, § 1, June 10, 1963, 77 Stat. 56, provided that Pub. L. 88-38, which amended section 206 of this title and enacted provisions set out as notes under section 206 of this title, may be cited as the "Equal Pay Act of 1963".

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87-30, § 1, May 5, 1961, 75 Stat. 65, provided: "That this Act [amending sections 203 to 208, 212 to 214, 216, and 217 of this title, and enacting provisions set out as a note under section 213 of this title] may be cited as the 'Fair Labor Standards Amendments of 1961'."

SHORT TITLE OF 1956 AMENDMENT

Act Aug. 8, 1956, ch. 1035, § 1, 70 Stat. 1118, provided that act Aug. 8, 1956, which is classified to sections 206, 213, and 216 of this title, should be popularly known as the "American Samoa Labor Standards Amendments of 1956".

SHORT TITLE OF 1949 AMENDMENT

Congress in enacting amendment of sections 202 to 208 and 211 to 217 of this title, provided by act Oct. 26, 1949, ch. 736, § 1, 63 Stat. 910, that the amendments should be popularly known as the "Fair Labor Standards Amendments of 1949".

§ 202. Congressional finding and declaration of policy

(a) The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. That Congress further finds that the employment of persons in domestic service in households affects commerce.

(b) It is declared to be the policy of this chapter, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

(June 25, 1938, ch. 676, § 2, 52 Stat. 1060; Oct. 26, 1949, ch. 736, § 2, 63 Stat. 910; Apr. 8, 1974, Pub. L. 93-259, § 7(a), 88 Stat. 62.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-259 added finding of Congress that the employment of persons in domestic service in households affects commerce.

1949—Subsec. (b). Act Oct. 26, 1949, included the regulation of commerce with foreign nations.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 29(a) of Pub. L. 93-259 provided that: "Except as otherwise specifically provided [see notes under sections 206, 207, and 213 of this title], the amendments made by this Act [see Short Title note set out under section 201 of this title] shall take effect on May 1, 1974."

EFFECTIVE DATE OF 1949 AMENDMENT

Section 16(a) of act Oct. 26, 1949, provided that: "The amendments made by this Act [enacting section 216b of this title, amending sections 202 to 208, 211 to 215, and 217 of this title, and repealing section 216(a) of this title] shall take effect upon the expiration of

ninety days from the date of its enactment [Oct. 26, 1947]; except that the amendment made by section 4 [amending section 204 of this title] shall take effect on the date of its enactment [Oct. 26, 1949]."

RULES, REGULATIONS, AND ORDERS WITH REGARD TO FAIR LABOR STANDARDS AMENDMENTS OF 1974

Section 29(b) of Pub. L. 93-259 provided that: "Notwithstanding subsection (a) [set out as an Effective Date of 1974 Amendment note above], on and after the date of the enactment of this Act [Apr. 8, 1974] the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act [see Short Title of 1974 amendment note set out under section 201 of this title]."

§ 203. Definitions

As used in this chapter—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2) and (3), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(v) in the Library of Congress;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employes him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level, or

(IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.

(3) For purposes of subsection (u) of this section, such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(*l*) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but op-

pressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

(o) Hours Worked.—In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, and agreement, (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. For purposes of this subsection, the activities performed by any person or persons—

(1) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit), or

(2) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(3) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which—

(1) during the period February 1, 1967, through January 31, 1969, is an enterprise

whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated);

(2) is engaged in laundering, cleaning, or repairing clothing or fabrics;

(3) is engaged in the business of construction or reconstruction, or both;

(4) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(5) is an activity of a public agency.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection. The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(June 25, 1938, ch. 676, § 3, 52 Stat. 1060; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, § 3, 63 Stat. 911; May 5, 1961, Pub. L. 87-30, § 2, 75 Stat. 65; Sept. 23, 1966, Pub. L. 89-601, title I, §§ 101-103, title II, § 215(a), 80 Stat. 830-832, 837; June 23, 1972, Pub. L. 92-318, title IX, § 906(b)(2), (3), 86 Stat. 375; Apr. 8, 1974, Pub. L. 93-259, §§ 6(a), 13(e), 88 Stat. 58, 64.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-259, § 6(a)(1), redefined "employer" to include a public agency and deleted text which excluded from such term the United States or any State or political subdivision of a State (except with respect to employees of a State, or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence).

Subsec. (e). Pub. L. 93-259, § 6(a)(2), in revising definition of "employee", incorporated existing introductory text in provisions designated as par. (1), inserting therein the exception provision; added par. (2); incorporated existing cl. (1) in provisions designated as par. (3); and deleted former cl. (2) excepting from "employee", "any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been engaged in agriculture less than thirteen weeks during the preceding calendar year".

Subsec. (h). Pub. L. 93-259, § 6(a)(3), substituted "other activity, or branch or group thereof" for "branch thereof, or group of industries".

Subsec. (m). Pub. L. 93-259, § 13(e), substituted in provision respecting wage of tipped employee "the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee" for "in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount" and added sentence "The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips."

Subsec. (r)(3). Pub. L. 93-259, § 6(a)(4), added par. "(3) in connection with the activities of a public agency,".

Subsec. (s). Pub. L. 93-259, § 6(a)(5), in first sentence, substituted preceding par. (1) "or employees handling, selling, or otherwise working on goods or materials" for "including employees handling, selling, or otherwise working on goods", and added par. "(5) is an activity of a public agency."; and added third sentence deeming employees of an enterprise which is a public agency to be employees engaged in commerce, or in production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

Subsec. (x). Pub. L. 93-259, § 6(a)(6), added subsec. (x).

1972—Subsec. (r)(1). Pub. L. 92-318, § 906(b)(2), inserted reference to a preschool.

Subsec. (s)(4). Pub. L. 92-318, § 906(b)(3), inserted reference to a preschool.

1966—Subsec. (d). Pub. L. 89-601, § 102(b), expanded the definition of employer to include a state or a political subdivision thereof with respect to employees in a hospital, institution, or school referred to in the last sentence of subsec. (r) of this section, or in the oper-

ation of a railway or carrier referred to in such sentence.

Subsec. (e). Pub. L. 89-601, § 103(a), excluded from the definition of "employee," when that term is used in the definition of the term "man-day," any agricultural employee who is the parent, spouse, child, or other member of his employer's immediate family and any agricultural hand harvest laborer, paid on a piece rate basis, who commutes daily from his permanent residence to the farm on which he is so employed, and who has been employed in agriculture less than 13 weeks during the preceding calendar year.

Subsec. (m). Pub. L. 89-601, § 101(a), added provisions for determining the wage of a tipped employee.

Subsec. (n). Pub. L. 89-601, § 215(a), struck out provision which directed that the definition of "resale" was not applicable when "resale" was used in subsection (s)(1) of this section.

Subsec. (r). Pub. L. 89-601, § 102(a), extended activities performed for a business purpose to include activities in the operation of hospitals, institutions for the sick, aged, or mentally ill or defective, schools for the handicapped, elementary and secondary schools, institutions of higher learning, or street, suburban, or interurban electric railway or local trolley or motorbus carriers if subject to regulation by a state or local agency regardless of whether public or private or whether operated for profit or not for profit.

Subsec. (s). Pub. L. 89-601, § 102(c), removed the gross annual business level tests of $1,000,000 for retail and service enterprises, street, suburban, or interurban electric railways or local trolley or motorbus carriers, and brought within the coverage of the gross annual business test all enterprises having employees engaged in commerce in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce, lowered the minimum gross annual volume test for covered enterprises from $1,000,000 to $500,000 for the period from Feb. 1, 1967, through Jan. 31, 1969, and to $250,000 for the period after Jan. 31, 1969, retained the $250,000 annual gross volume test for coverage of gasoline service establishments, and expanded coverage to include laundering or cleaning services, construction or reconstruction activities, or operation of hospitals, certain institutions for the care of the sick, aged, or mentally ill, certain special schools, and institutions of higher learning regardless of annual gross volume.

Subsec. (t). Pub. L. 89-601, § 101(b), added subsec. (t).

Subsec. (u). Pub. L. 89-601, § 103(b), added subsec. (u).

Subsecs. (v), (w). Pub. L. 89-601, § 102(d), added subsecs. (v), (w).

1961—Subsec. (m). Pub. L. 87-30, § 2(a), provided for exclusion from wages under a collective-bargaining agreement the cost of board, lodging, or other facilities and authorized the Secretary to determine the fair value of board, lodging, or other facilities for defined classes of employees in defined areas to be used in lieu of actual cost.

Subsec. (n). Pub. L. 87-30, § 2(b), inserted ", except as used in subsection (s)(1) of this section,".

Subsecs. (p) to (s). Pub. L. 87-30, § 2(c), added subsecs. (p) to (s).

1949—Subsec. (b). Act Oct. 26, 1949, § 3(a), substituted "between" for "from" following "States or", and "and" for "to" preceding "any place".

Subsec. (j). Act Oct. 26, 1949, § 3(b), inserted "closely related" preceding "process" and substituted "directly essential" for "necessary" following "occupation".

Subsec. (*l*)(1). Act Oct. 26, 1949, § 3(c), included parental employment of a child under 16 years of age in an occupation found by the Secretary of Labor to be hazardous for children between the ages of 16 and 18 years, in the definition of oppressive child labor.

Subsecs. (n) and (o). Act Oct. 26, 1949, § 3(d) added subsecs. (n) and (o).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 602 of Pub. L. 89-601 provided in part that: "Except as otherwise provided in this Act, the amendments made by this Act [amending sections 203, 206, 207, 213, 214, 216, 218, and 255 of this title] shall take effect on February 1, 1967."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 14 of Pub. L. 87-30 provided that: "The amendments made by this Act [to sections 203 to 208, 212 to 214, 216, and 217 of this title] shall take effect upon the expiration of one hundred and twenty days after the date of its enactment [May 5, 1961], except as otherwise provided in such amendments and except that the authority to promulgate necessary rules, regulations, or orders with regard to amendments made by this Act, under the Fair Labor Standards Act of 1938 and amendments thereto [this chapter], including amendments made by this Act, may be exercised by the Secretary on and after the date of enactment of this Act [May 5, 1961]."

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, as effective ninety days after Oct. 23, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

References to the Chief of the Children's Bureau in subsec. (*l*) were changed to Secretary of Labor by Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5, Government Organization and Employees, which transferred the functions of the Children's Bureau and its Chief under sections 201 to 216 and 217 to 219 of this title to the Secretary of Labor to be performed under his direction and control by such officers and employees of the Department of Labor as he designates.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Section 602 of Pub. L. 89-601 provided in part that: "On and after the date of the enactment of this Act [Sept. 23, 1966] the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act [see Short Title of 1966 Amendment note set out under section 201 of this title]."

CROSS REFERENCES

General provisions as to registry and documents of vessels, see section 11 et seq. of Title 46, Shipping.

Portal-to-Portal Act of 1947, sections 251 to 262 of this title, as affected by subsec. (o), see section 216 note of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 213 of this title; title 7 section 2042; title 49 section 303.

§ 204. Administration

(a) Creation of Wage and Hour Division in Department of Labor; Administrator

There is created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this chapter referred to as the "Administrator"). The Administrator shall be ap-

pointed by the President, by and with the advice and consent of the Senate.

(b) Appointment, selection, classification, and promotion of employees by Administrator

The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) Principal office of Administrator; jurisdiction

The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) Annual report to Congress; studies of exemptions to hour and wage provisions and means to prevent curtailment of employment opportunities

(1) The Secretary shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this chapter, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. Such report shall also include a summary of the special certificates issued under section 214(b) of this title.

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 213 of this title, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 214 of this title.

(e) Study of effects of foreign production on unemployment; report to President and Congress

Whenever the Secretary has reason to believe that in any industry under this chapter the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this chapter as he may determine to be pertinent to such report.

(f) Employees of Library of Congress; administration of provisions by Civil Service Commission

The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this chapter with respect to such individuals. Notwithstanding any other provision of this chapter, or any other law, the Civil Service Commission is authorized to administer the provisions of this chapter with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 216(b) of this title.

(June 25, 1938, ch. 676, § 4, 52 Stat. 1061; Oct. 26, 1949, ch. 736, § 4, 63 Stat. 911; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Aug. 12, 1955, ch. 867, § 2, 69 Stat. 711; May 5, 1961, Pub. L. 87-30, § 3, 75 Stat. 66; Apr. 8, 1974, Pub. L. 93-259, §§ 6(b), 24(c), 27, 88 Stat. 60, 72, 73.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (b) are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

The effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (d)(3), is the effective date of Pub. L. 93-259, which is May 1, 1974, except as otherwise specifically provided, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

CODIFICATION

In subsec. (a), provisions that prescribed the compensation of the Administrator were omitted to conform to the provisions of the Executive Schedule. See section 5316 of Title 5, Government Organization and Employees.

In subsec. (b), "chapter 51 and subchapter III of chapter 53 of title 5" was substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1974—Subsec. (d)(1). Pub. L. 93-259, §§ 24(c), 27(1), (2), added provision at end of subsec. (d) requiring the report to Congress to include a summary of the special certificates issued under section 214(b) of this title, designated subsec. (d) provisions as subsec. (d)(1), and required the report to contain an evaluation and appraisal of overtime coverage established by this chapter, respectively.

Subsecs. (d)(2), (3). Pub. L. 93-259, § 27(3), added pars. (2) and (3).

Subsec. (f). Pub. L. 93-259, § 6(b), added subsec. (f).

1961—Subsec. (e). Pub. L. 87-30 added subsec. (e).

1955—Subsec. (d). Act Aug. 12, 1955, required an evaluation and appraisal by the Secretary of the minimum wages, together with his recommendations to Congress, to be included in the annual report.

1949—Subsec. (b). Act Oct. 28, 1949, substituted the "Classification Act of 1949" for the "Classification Act of 1923".

Subsec. (a). Act Oct. 26, 1949, increased the compensation of the Administrator to $15,000.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

REPEALS

Acts Oct. 26, 1949, ch. 736, § 4, 63 Stat. 911, and Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972, set out in the credit of this section, were repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Labor and functions of all agencies and employees of that Department were, with the exception of the functions vested by the Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by the Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

SECRETARY OF LABOR

Section 6 of act Aug. 12, 1955, provided that: "The term 'Secretary' as used in this Act and in amendments made by this Act [to sections 204(d), 205(a), 206(a)(1), 208(a), (b), (c), (d), (e), and 210(a) of this title] means the Secretary of Labor."

§ 205. Special industry committees for Puerto Rico and the Virgin Islands

(a) Establishment; residents as members of committees

The Administrator shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 206 of this title to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under said section to employees therein engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees shall be subject to the provisions of section 208 of this title.

(b) Appointment of committee without regard to other laws pertaining to the appointment and compensation of employees of the United States; composition of committees

An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.

(c) Quorum; compensation; employees

Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Administrator shall furnish the committee with adequate legal, stenographic, clerical, and

other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) Submission of data to committees

The Administrator shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Administrator to furnish additional information to aid it in its deliberations.

(e) Application of sections 206 and 208 to employees in Puerto Rico or the Virgin Islands

The provisions of this section, section 206(c) of this title, and section 208 of this title shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this chapter in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this chapter. As used in the preceding sentence, the term "State" does not include a territory or possession of the United States.

(June 25, 1938, ch. 676, § 5, 52 Stat. 1062; June 26, 1940, ch. 432, § 3(c), 54 Stat. 615; Oct. 26, 1949, ch. 736, § 5, 63 Stat. 911; Aug. 12, 1955, ch. 867, § 5(a), 69 Stat. 711; May 5, 1961, Pub. L. 87-30, § 4, 75 Stat. 67; Apr. 8, 1974, Pub. L. 93-259, § 5(a), 88 Stat. 56.)

AMENDMENTS

1974—Subsec. (e). Pub. L. 93-259 added subsec. (e).

1961—Subsec. (a). Pub. L. 87-30 inserted "or employed in any enterprise engaged in commerce or in the production of goods for commerce" following "production of goods for commerce" in two instances.

1955—Subsec. (a). Act Aug. 12, 1955, eliminated provisions which subjected the Administrator to the provisions of section 208 of this title in the determination of minimum rates of wages and classifications.

1949—Act Oct. 26, 1949, amended section generally by making it applicable only to Puerto Rico and the Virgin Islands, and omitted former subsec. (e) of the section since its provisions are now covered by subsec. (a) of this section.

1940—Subsec. (e). Joint Res. June 26, 1940 added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Subsec. (e) of this section effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Labor and functions of all agencies and employees of that Department were, with the exception of the functions vested by the Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by the Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

SECRETARY OF LABOR

The term "Secretary" as meaning the Secretary of Labor, see section 6 of act Aug. 12, 1955, set out as a note under section 204 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 206, 208, 214 of this title.

§ 206. Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than $2 an hour during the period ending December 31, 1974, not less than $2.10 an hour during the year beginning January 1, 1975, and not less than $2.30 an hour after December 31, 1975, except as otherwise provided in this section;

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the

method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b) of this section, not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint in the same manner and pursuant to the same provisions as are applicable to the special industry committees provided for Puerto Rico and the Virgin Islands by this chapter as amended from time to time. Each such committee shall have the same powers and duties and shall apply the same standards with respect to the application of the provisions of this chapter to employees employed in American Samoa as pertain to special industry committees established under section 205 of this title with respect to employees employed in Puerto Rico or the Virgin Islands. The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection;

(4) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(5) if such employee is employed in agriculture, not less than—

(A) $1.60 an hour during the period ending December 31, 1974.

(B) $1.80 an hour during the year beginning January 1, 1975,

(C) $2 an hour during the year beginning January 1, 1976,

(D) $2.20 an hour during the year beginning January 1, 1977, and

(E) $2.30 an hour after December 31, 1977.

(b) Additional applicability to employees pursuant to subsequent amendatory provisions

Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) of this section applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or the Fair Labor Standards Amendments of 1974, wages at the following rates:

(1) not less than $1.90 an hour during the period ending December 31, 1974,

(2) not less than $2 an hour during the year beginning January 1, 1975.

(3) not less than $2.20 an hour during the year beginning January 1, 1976, and

(4) not less than $2.30 an hour after December 31, 1976.

(c) Wage rates superseded by recommendation of special industry committee

(1) The rate or rates provided by subsections (a) and (b) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 205 of this title.

(2) Except as provided in paragraphs (4) and (5), in the case of any employee who is covered by such a wage order on April 8, 1974 and to whom the rate or rates prescribed by subsection (a) or (b) of this section would otherwise apply, the wage rate applicable to such employee shall be increased as follows:

(A) Effective on the effective date of the Fair Labor Standards Amendments of 1974, the wage order rate applicable to such employee on the day before such date shall—

(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

(B) Effective on the first day of the second and each subsequent year after such date, the highest wage order rate applicable to such employees on the date before such first day shall—

(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

In the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 205 of this title, to whom the rate or rates prescribed by subsection (a)(5) of this section would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the increases prescribed by this paragraph shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage rate is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

(3) In the case of any employee employed in Puerto Rico or the Virgin Islands to whom this section is made applicable by the amendments made to this chapter by the Fair Labor Standards Amendments of 1974, the Secretary shall, as soon as practicable after April 8, 1974, appoint a special industry committee in accordance with section 205 of this title to recom-

mend the highest minimum wage rate or rates, which shall be not less than 60 per centum of the otherwise applicable minimum wage rate in effect under subsection (b) of this section or $1.00 an hour, whichever is greater, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (b) of this section. The rate recommended by the special industry committee shall (A) be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1974, and (B) except in the case of employees of the government of Puerto Rico or any political subdivision thereof, be increased in accordance with paragraph (2)(B).

(4)(A) Notwithstanding paragraph (2)(A) or (3), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(A) or (3) of this subsection, shall, on the effective date of the wage increase under paragraph (2)(A) or of the wage rate recommended under paragraph (3), as the case may be, be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) of this section or $1.00, whichever is higher.

(B) Notwithstanding paragraph (2)(B), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(B), shall, on and after the effective date of the first wage increase under paragraph (2)(B), be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) of this section or $1.00, whichever is higher.

(5) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a) or (b) of this section which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under such subsection shall apply to such employee.

(6) Each minimum wage rate prescribed by or under paragraph (2) or (3) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 208 of this title) fixing a higher minimum wage rate.

(d) Prohibition of sex discrimination

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e) Employees of employers providing contract services to United States

(1) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351-357) or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965 [41 U.S.C. 351 et seq.] every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b) of this section, except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

(f) Employees in domestic service

Any employee—

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) of this section unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act [42 U.S.C. 409(g)] constitute wages for the purposes of title II of such Act [42 U.S.C. 401 et seq.], or

(2) who in any workweek—

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under subsection (b) of this section.

(June 25, 1938, ch. 676, § 6, 52 Stat. 1062; June 26, 1940, ch. 432, § 3(e), (f), 54 Stat. 616; Oct. 26, 1949, ch. 736, § 6, 63 Stat. 912; Aug. 12, 1955, ch. 867, § 3, 69 Stat. 711; Aug. 8, 1956, ch. 1035, § 2, 70 Stat. 1118; May 5, 1961, Pub. L. 87-30, § 5, 75 Stat. 67; June 10, 1963, Pub. L. 88-38, § 3, 77 Stat. 56; Sept. 23, 1966, Pub. L. 89-601, title III, §§ 301-305, 80 Stat. 838, 839, 841; Apr. 8, 1974, Pub. L. 93-259, §§ 2-4, 5(b), 7(b)(1), 88 Stat. 55, 56, 62.)

REFERENCES IN TEXT

The Fair Labor Standards Amendments of 1966, referred to in subsec. (b) is Pub. L. 89-601, Sept. 23, 1966, 80 Stat. 830. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 201 of this title and Tables volume.

The Education Amendments of 1972, referred to in subsec. (b), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20, and Tables volume.

The Fair Labor Standards Amendments of 1974, referred to in subsecs. (b) and (c)(3), is Pub. L. 93-259, Apr. 8, 1974, 88 Stat. 55. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 201 of this title and Tables volume.

The effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (c)(2) and (3), is the effective date of Pub. L. 93-259, which is May 1, 1974, except as otherwise specifically provided. See section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

The Service Contract Act of 1965, referred to in subsecs. (e)(1), (2), is Pub. L. 89-286, Oct. 22, 1965, 79 Stat. 1034, as amended, which is classified generally to chapter 6 (§ 351 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 351 of Title 41, and Tables volume.

The Social Security Act, referred to in subsec. (f)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of such Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

AMENDMENTS

1974—Subsec. (a)(1). Pub. L. 93-259, § 2, substituted "not less than $2 an hour during the period ending December 31, 1974, not less than $2.10 an hour during the year beginning January 1, 1975, and not less than $2.30 an hour after December 31, 1975" for "not less than $1.40 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966 and not less than $1.60 an hour thereafter".

Subsec. (a)(5). Pub. L. 93-259, § 4, substituted provisions for a minimum wage rate not less than: $1.60 an hour during period ending Dec. 31, 1974; $1.80, $2, and $2.20 an hour during years beginning Jan. 1, 1975, 1976, and 1977, respectively; and $2.30 an hour after Dec. 31, 1977 for former provisions for a minimum wage rate not less than $1 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966, not less than $1.15 an hour during the second year from such date, and not less than $1.30 an hour thereafter.

Subsec. (b). Pub. L. 93-259, § 3, inserted references to "title II of the Education Amendments of 1972" and "Fair Labor Standards Amendments of 1974" and substituted provisions for a minimum wage rate not less than $1.90 an hour during period ending Dec. 31, 1974; $2 and $2.20 an hour during years beginning Jan. 1, 1975, and 1976, respectively; and $2.30 an hour after Dec. 31, 1976 for former provisions for a minimum wage rate not less than: $1 an hour during first year from effective date of Fair Labor Standards Amendments of 1966; $1.15, $1.30, and $1.45 an hour during second, third, and fourth years from such date; and $1.60 an hour thereafter.

Subsecs. (c)(2) to (6). Pub. L. 93-259, § 5(b), added pars. (2) to (6) and struck out former pars. (2) to (4) which had provided:

"(2) In the case of any such employee who is covered by such a wage order and to whom the rate or rates prescribed by subsection (a) of this section would otherwise apply, the following rates shall apply:

"(A) The rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, increased by 12 per centum, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C). Such rate or rates shall become effective sixty days after the effective date of the Fair Labor Standards Amendments of 1966 or one year from the effective date of the most recent wage order applicable to such employee therefore issued by the Secretary pursuant to the recommendations of a special industry committee appointed under section 205 of this title, whichever is later.

"(B) Beginning one year after the applicable effective date under paragraph (A), not less than the rate or rates prescribed by paragraph (A), increased by an amount equal to 16 per centum of the rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C).

"(C) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands, may apply to the Secretary in writing for the appointment of a review committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates provided by paragraph (A) or (B). Any such application with respect to any rate or rates provided for under paragraph (A) shall be filed within sixty days following the enactment of the Fair Labor Standards Amendments of 1966 and any such application with respect to any rate or rates provided for under paragraph (B) shall be filed not more than one hundred and twenty days and not less than sixty days prior to the effective date of the applicable rate or rates under paragraph (B). The Secretary shall promptly consider such application and may appoint a review committee if he has reasonable cause to believe, on the basis of financial and other information contained in the application, that compliance with any applicable rate or rates prescribed by paragraph (A) or (B) will substantially curtail employment in such industry. The Secretary's decision upon any such application shall be final. Any wage order issued pursuant to the recommendations of a review committee appointed under this paragraph shall take effect on the applicable effective date provided in paragraph (A) or (B).

"(D) In the event a wage order has not been issued pursuant to the recommendation of a review committee prior to the applicable effective date under paragraph (A) or (B), the applicable percentage in-

crease provided by any such paragraph shall take effect on the effective date prescribed therein, except with respect to the employees of an employer who filed an application under paragraph (C) and who files with the Secretary an undertaking with a surety or sureties satisfactory to the Secretary for payment to his employees of an amount sufficient to compensate such employees for the difference between the wages they actually receive and the wages to which they are entitled under this subsection. The Secretary shall be empowered to enforce such undertaking and any sums recovered by him shall be held on a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sum not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts.

"(3) In the case of any such employee to whom subsection (a)(5) or subsection (b) of this section would otherwise apply, the Secretary shall within sixty days after the effective date of the Fair Labor Standards Amendments of 1966 appoint a special industry committee in accordance with section 205 of this title to recommend the highest minimum wage rate or rates in accordance with the standards prescribed by section 208 of this title, but not in excess of the applicable rate provided by subsection (a)(5) or subsection (b) of this section, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (a)(5) or subsection (b) of this section, as the case may be. The rate or rates recommended by the special industry committee shall be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1966.

"(4) The provisions of sections 205 and 208 of this title, relating to special industry committees, shall be applicable to review committees appointed under this subsection. The appointment of a review committee shall be in addition to and not in lieu of any special industry committee required to be appointed pursuant to the provisions of subsection (a) of section 208 of this title, except that no special industry committee shall hold any hearing within one year after a minimum wage rate or rates for such industry shall have been recommended to the Secretary by a review committee to be paid in lieu of the rate or rates provided for under paragraph (A) or (B). The minimum wage rate or rates prescribed by this subsection shall be in effect only for so long as and insofar as such minimum wage rate or rates have not been superseded by a wage order fixing a higher minimum wage rate or rates (but not in excess of the applicable rate prescribed in subsection (a) or subsection (b) of this section) hereafter issued by the Secretary pursuant to the recommendation of a special industry committee."

Subsec. (f). Pub. L. 93-259, § 7(b)(1), added subsec. (f).

1966—Subsec. (a). Pub. L. 89-601, § 301(a), inserted ", or is employed in an enterprise engaged in commerce or in the production of goods for commerce," in the opening provisions.

Subsec. (a)(1). Pub. L. 89-601, § 301(a), raised the minimum wage to not less than $1.40 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966, and not less than $1.60 thereafter, except as otherwise provided in this section.

Subsec. (a)(4). Pub. L. 89-601, § 301(b), added subsec. (a)(4).

Subsec. (a)(5). Pub. L. 89-601, § 302, added subsec. (a)(5).

Subsec. (b). Pub. L. 89-601, § 303, substituted provisions for a minimum wage for employees covered for the first time by the Fair Labor Standards Amendments of 1966 (other than newly covered agricultural employees) at not less than $1 an hour during the first year from the effective date of the 1966 amendments, not less than $1.15 an hour during the second year from such date, not less than $1.30 an hour during the third year from such date, not less than $1.45 an hour during the fourth year from such date, and not less than $1.60 an hour thereafter, for provisions setting a timetable for increases in the minimum wage of employees first covered by the Fair Labor Standards Amendments of 1961.

Subsec. (c). Pub. L. 89-601, § 304, provided for a percentage minimum wage increase for employees in Puerto Rico and the Virgin Islands who are covered by wage orders already in effect as the equivalent of the percentage increase on the mainland, provided for minimum wages for employees brought within coverage of this chapter for the first time by the Fair Labor Standards Amendments of 1966 at rates to be set by special industry committees so as to reach as rapidly as is economically feasible without substantially curtailing employment the objectives of the minimum wage prescribed for mainland employees, and eliminated the review committees that has been established by the Fair Labor Standards Amendments of 1961.

Subsec. (e). Pub. L. 89-601, § 305, added subsec. (e).

1963—Subsec. (d). Pub. L. 88-38 added subsec. (d).

1961—Subsec. (a). Pub. L. 87-30, § 5(a)(1), inserted "in any workweek" in the opening provisions.

Subsec. (a)(1). Pub. L. 87-30, § 5(a)(2), increased the minimum wage from not less than $1 an hour to not less than $1.15 an hour during the first two years from the effective date of the Fair Labor Standards Amendments of 1961, and not less than $1.25 an hour thereafter.

Subsec. (a)(3). Pub. L. 87-30, § 5(a)(3), inserted "in lieu of the rate or rates provided by this subsection or subsection (b) of this section" and "as amended from time to time" and deleted "now" preceding "applicable to".

Subsec. (b). Pub. L. 87-30, § 5(b), added subsec. (b). Former subsec. (b) had provided that "This section shall take effect upon the expiration of one hundred and twenty days from June 25, 1938."

Subsec. (c). Pub. L. 87-30, § 5(c), added subsec. (c). Former subsec. (c) had provided for wage orders recommended by special industrial committees and covering employees in Puerto Rico and the Virgin Islands to supersede minimum wages of $1 an hour and for continuance of wage orders in effect prior to effective date of this chapter until superseded by wage orders recommended by the special industrial committees.

1956—Subsec. (a)(3). Act Aug. 8, 1956, added subsec. (a)(3).

1955—Subsec. (a)(1). Act Aug. 12, 1955, increased the minimum wage from not less than 75 cents an hour to not less than $1 an hour.

1949—Subsec. (a). Act Oct. 26, 1949, § 6(a), (b), struck out subpars. (1), (2), (3), and (4), inserted subpar. (1) fixing the minimum wage rate at not less than 75 cents an hour, and redesignated former subpar. (5) as (2).

Subsec. (c). Act Oct. 26, 1949, § 6(c), continued existing minimum wage rates in Puerto Rico and the Virgin Islands until superseded by special industry committee wage orders.

1940—Subsec. (a)(5). Act June 26, 1940, added par. (5).

Effective Date of 1974 Amendment

Subsec. (f) and amendment of subsecs. (a)(1), (5), and (b) of this section by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

Section 5(b) of Pub. L. 93-259 provided that subsecs. (c)(2) to (6) and deletion of former subsecs. (c)(2) to (4) of this section shall be effective Apr. 8, 1974.

Effective Date of 1963 Amendment

Section 4 of Pub. L. 88-38 provided that: "The amendments made by this Act [amending this section, and enacting provisions set out as notes udner this section] shall take effect upon the expiration of one year from the date of its enactment [June 10, 1963]: *Pro-*

vided, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act [June 10, 1963], entered into by a labor organization as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended [subsec. (d)(4) of this section], the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act [June 10, 1963], whichever shall first occur."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 12, 1955, which amended subsec. (a)(1) of this section provided in part that the amendment of subsec. (a)(1) should be effective Mar. 1, 1956.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Labor and functions of all agencies and employees of that Department were, with the exception of the functions vested by the Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by the Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

CONGRESSIONAL FINDING AND DECLARATION OF POLICY

Section 2 of Pub. L. 88-38 provided that:

"(a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex—

"(1) depresses wages and living standards for employees necessary for their health and efficiency;

"(2) prevents the maximum utilization of the available labor resources;

"(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

"(4) burdens commerce and the free flow of goods in commerce; and

"(5) constitutes an unfair method of competition.

"(b) It is hereby declared to be the policy of this Act [amending this section, and enacting provisions set out as notes under this section], through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries."

SECRETARY OF LABOR

The term "Secretary" as meaning the Secretary of Labor, see section 6 of act Aug. 12, 1955, set out as a note under section 204 of this title.

CROSS REFERENCES

Action by employee to recover unpaid minimum wages and liquidated damages, see section 216 of this title.

Employees performing services within foreign country or certain territory under jurisdiction of United States as not subject to provisions of this section, see section 213 of this title.

Hours worked defined, see section 203 of this title.

Minimum wages for employees covered by Walsh-Healy Act, see section 35 of Title 41, Public Contracts.

Minimum wages of employees of Government contractors prescribed by Bacon-Davis Act, see section 276a of Title 40, Public Buildings, Property, and Works.

Overtime pay, see section 207 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 203, 205, 207, 208, 213, 214, 215, 216, 218, 821, 848 of this title; title 5 sections 5343, 5349; title 15 section 1673; title 18 section 3575; title 21 section 849; title 41 section 351; title 42 sections 300e-9, 431, 2000e-2, 2930b, 2951, 3056.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 16-572 of the District of Columbia Code.

§ 207. Maximum hours

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 206 of this title,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c), (d) Repealed. Pub. L. 93–259, § 19(e), Apr. 8, 1974, 88 Stat. 66

(e) Definition of "regular rate" of employment

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day of workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work per-

formed in nonovertime hours on other days; or

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section,[1] where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.

(f) Employment necessitating irregular hours of work

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) of this section if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 206 of this title (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) Employment at piece rates

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) of this section are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Extra compensation creditable toward overtime compensation

Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section shall be creditable toward overtime compensation payable pursuant to this section.

(i) Employment by retail or service establishment

No employer shall be deemed to have violated subsection (a) of this section by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) Employment in hospital or establishment engaged in care of sick, aged or mentally ill

No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) of this section if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) Employment by public agency engaged in fire protection or law enforcement activities

No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 216 hours; or

(2) in the case of such an employee to whom a work period of at least 7 but less

[1] So in original. Probably should have closed parenthesis.

than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(l) Employment in domestic service in one or more households

No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a) of this section.

(m) Employment in tobacco industry

For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

(n) Employment by street, suburban or interurban electric railway, or local trolley or motorbus carrier

In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) of this section applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

(June 25, 1938, ch. 676, § 7, 52 Stat. 1063; Oct. 29, 1941, ch. 461, 55 Stat. 756; July 20, 1949, ch. 352, § 1, 63 Stat. 446; Oct. 26, 1949, ch. 736, § 7, 63 Stat. 912; May 5, 1961, Pub. L. 87-30, § 6, 75 Stat. 69; Sept. 23, 1966, Pub. L. 89-601, title II, §§ 204(c), (d), 212(b), title IV, §§ 401-403, 80 Stat. 835, 837, 841, 842; Apr. 8, 1974, Pub. L. 93-259, §§ 6(c)(1)(A)-(C), 7(b)(2), 9(a), 12(b), 19, 21(a), 88 Stat. 60, 62, 64, 66, 68.)

AMENDMENT OF SUBSEC. (k)

Section 6(c)(1)(D) of Pub. L. 93-259, provided that effective Jan. 1, 1978, such subsec. (k) is amended to read as follows:

"(k) No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

"(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

"(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed."

REFERENCES IN TEXT

The Fair Labor Standards Amendments of 1966, referred to in subsec. (a)(2) is Pub. L. 89-601, Sept. 23, 1966, 80 Stat. 830. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 201 of this title and Tables volume.

The effective date of the Fair Labor Standards Amendments of 1966, referred to in subsec. (a)(2)(A), means the effective date of Pub. L. 89-601, which is Feb. 1, 1967 except as otherwise provided, see section 602 of Pub. L. 89-601, set out as an Effective Date of 1966 Amendment note under section 203 of this title.

Section 6(c)(3) of the Fair Labor Standards Amendments of 1974, referred to in subsec. (k)(1), as effective Jan. 1, 1978, is section 6(c)(3) of Pub. L. 93-259, which is set out as a note under section 213 of this title.

AMENDMENTS

1974—Subsec. (c). Pub. L. 93-259, § 19(a), (b), substituted "seven workweeks" for "ten workweeks", "ten workweeks" for "fourteen workweeks" and "forty-eight hours" for "fifty hours" effective May 1, 1974. Pub. L. 93-259, § 19(c), substituted "five workweeks" for "seven workweeks" and "seven workweeks" for "ten workweeks" effective Jan. 1, 1975. Pub. L. 93-259, § 19(d), substituted "three workweeks" for "five workweeks" and "five workweeks" for "seven workweeks" effective Jan. 1, 1976. Pub. L. 93-259, § 19(e), repealed subsec. (c) effective Dec. 31, 1976.

Subsec. (d). Pub. L. 93-259, § 19(a), (b), substituted "seven workweeks" for "ten workweeks", "ten workweeks" for "fourteen workweeks" and "forty-eight hours" for "fifty hours" effective May 1, 1974. Pub. L. 93-259, § 19(c), substituted "five workweeks" for "seven workweeks" and "seven workweeks" for "ten workweeks" effective Jan. 1, 1975. Pub. L. 93-259, § 19(d), substituted "three workweeks" for "five workweeks" and "five workweeks" for "seven workweeks" effective Jan. 1, 1976. Pub. L. 93-259, § 19(e), repealed subsec. (d) effective Dec. 31, 1976.

Subsec. (j). Pub. L. 93-259, § 12(b), extended provision excepting from being considered a subsec. (a) violation agreements or undertakings between employers and employees respecting consecutive work period and overtime compensation to agreements between employers engaged in operation of an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises and employees respecting consecutive work period and overtime compensation.

Subsec. (k). Pub. L. 93-259, § 6(c)(1)(A), added subsec. (k), effective Jan. 1, 1975. Pub. L. 93-259, § 6(c)(1)(B), substituted "232 hours" for "240 hours", wherever appearing, effective Jan. 1, 1976. Pub. L. 93-259, § 6(c)(1)(C), substituted "216 hours" for "232 hours", wherever appearing, effective Jan. 1, 1977. Pub. L. 93-259, § 6(c)(1)(D), effective Jan. 1, 1978, substituted in par. (1) "exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975" for "exceed 216 hours" and inserted in par. (2) "(or if lower, the number of hours referred to in clause (B) of paragraph (1))."

Subsec. (*l*). Pub. L. 93-259, § 7(b)(2), added subsec. (*l*).

Subsec. (m). Pub. L. 93-259, § 9(a), added subsec. (m).

Subsec. (n). Pub. L. 93-259, § 21(a), added subsec. (n).

1966—Subsec. (a). Pub. L. 89-601, § 401, retained provision for 40-hour workweek and compensation for employment in excess of 40 hours at not less than one and one-half times the regular rate of pay and substituted provisions setting out a phased timetable for the workweek in the case of employees covered by the overtime provisions for the first time under the Fair Labor Standards Amendments of 1966 beginning at 44 hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966, 42 hours during the second year from such date, and 40 hours after the expiration of the second year from such date, for provisions giving a phased timetable for workweeks in the case of employees first covered under the provisions of the Fair Labor Standards Amendments of 1961.

Subsec. (b)(3). Pub. L. 89-601, § 212(b), substituted provisions granting an overtime exemption for petroleum distribution employees if they receive compensation for the hours of employment in excess of 40 hours in any workweek at a rate not less than one and one-half times the applicable minimum wage rate and if the enterprises do an annual gross sales volume of less than $1,000,000, if more than 75 per centum of such enterprise's annual dollar volume of sales is made within the state in which the enterprise is located, and not more than 25 per centum of the annual dollar volume is to customers who are engaged in the bulk distribution of such products for resale for provisions covering employees for a period of not more than 14 workweeks in the aggregate in any calendar year in an industry found to be of a seasonal nature.

Subsec. (c). Pub. L. 89-601, § 204(c), substituted provisions for an overtime exemption of 10 weeks in any calendar year or 14 weeks in the case of an employer not qualifying for the exemption in subsec. (d) of this section, limited to 10 hours a day and 50 hours a week, applicable to employees employed in seasonal industries which are not engaged in agricultural processing, for provisions granting a year-round unlimited exemption applicable to employees of employers engaged in first processing of milk into dairy products, cotton compressing and ginning, cottonseed processing, and the processing of certain farm products into sugar, and granting a 14-week unlimited exemption applicable to employees of employers engaged in first processing of perishable or seasonal fresh fruits or vegetables first processing within the area of production of any agricultural commodity during a seasonal operation, or the handling or slaughtering of livestock and poultry.

Subsec. (d). Pub. L. 89-601, § 204(c), added subsec. (d). Former subsec. (d) redesignated as subsec. (e).

Subsecs. (e), (f). Pub. L. 89-601, § 204(d)(1), redesignated former subsecs. (d) and (e) as (e) and (f) respectively. Former subsec. (f) redesignated as subsec. (g).

Subsecs. (g), (h). Pub. L. 89-601, § 204(d)(1), (2), redesignated former subsecs. (f) and (g) as subsecs. (g) and (h) respectively, and in subsecs. (g) and (h) as so redesignated, substituted reference to "subsection (e)" for reference to "subsection (d)." Former subsec. (h) redesignated as subsec. (i).

Subsec. (i). Pub. L. 89-601, §§ 204(d)(1), 402 redesignated former subsec. (h) as subsec. (i), and, in subsec. (i) as so redesignated, added provision that, in determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

Subsec. (j). Pub. L. 89-601, § 403, added subsec. (j).

1961—Subsec. (a). Pub. L. 87-30, § 6(a), designated existing provisions as subsec. (a)(1), inserted "in any work week" therein, and added subsec. (a)(2).

Subsec. (b)(2). Pub. L. 87-30, § 6(b), substituted "in excess of the maximum workweek applicable to such employee under subsection (a) of this section" for "in excess of forty hours in the workweek".

Subsecs. (d)(5), (7). Pub. L. 87-30, § 6(c), (d), substituted "in excess of the maximum workweek applicable to such employee under subsection (a) of this section" for "forty in a workweek" in par. (5) and "the maximum workweek applicable to such employee under subsection (a) of this section" for "forty hours" in par. (7).

Subsec. (e). Pub. L. 87-30, § 6(e), substituted "the maximum workweek applicable to such employee under subsection (a) of this section", "subsection (a) or (b) of section 206 of this title (whichever may be applicable" and "such maximum" for "forty hours", "section 206(a) of this title" and "forty in any", respectively.

Subsec. (f). Pub. L. 87-30, § 6(f), substituted "the maximum workweek applicable to such employee under subsection" for "forty hours" in two instances.

Subsec. (h). Pub. L. 87-30, § 6(g), added subsec. (h).

1949—Subsec. (a). Act Oct. 26, 1949, continued requirement that employment in excess of 40 hours in a workweek be compensated at rate not less than 1½ times regular rate except as to employees specifically exempted.

Subsec. (b)(1). Act Oct. 26, 1949, increased employment period limitation from one thousand hours to one thousand and forty hours in semi-annual agreements.

Subsec. (b)(2). Act Oct. 26, 1949, increased employment period limitation from two thousand and eighty hours to two thousand two hundred and forty hours in

annual agreements, fixed minimum and maximum guaranteed employment periods, and provided for overtime rate for hours worked in excess of the guaranty.

Subsec. (c). Act Oct. 26, 1949, added buttermilk to commodities listed for first processing.

Subsec. (d). Act Oct. 26, 1949, omitted former subsec. (d) and inserted a new subsec. (d) defining regular rate with certain specified types of payments excepted.

Subsec. (e) added by act July 20, 1949, and amended by act Oct. 26, 1949, which determined compensation to be paid for irregular hours of work.

Subsecs. (f) and (g). Act Oct. 26, 1949, added subsecs. (f) and (g).

1941—Subsec. (b)(2) amended by act Oct. 29, 1941.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 7(b)(2), 9(a), 12(b), 19(a) and 21(a) of Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

Section 6(c)(1) of Pub. L. 93-259 provided in part that enactment and amendment of subsec. (k) of this section by section 6(c)(1) of Pub. L. 93-259 shall be effective Jan. 1, 1975, 1976, 1977, and 1978, respectively.

Section 19(c) to (e) of Pub. L. 93-259 provided that amendment and repeal of subsecs. (c) and (d) of this section by section 19(c) to (e) of Pub. L. 93-259 shall be effective Jan. 1, 1975, Jan. 1, 1976, and Dec. 31, 1976, respectively.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949 effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Labor and functions of all agencies and employees of that Department were, with the exception of the functions vested by the Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by the Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

STUDY BY SECRETARY OF LABOR OF EXCESSIVE OVERTIME

Pub. L. 89-601, title VI, § 603, Sept. 23, 1966, 80 Stat. 844, directed the Secretary of Labor to make a complete study of practices dealing with overtime payments for work in excess of forty hours per week and the extent to which such overtime work impeded the creation of new job opportunities in American industry and instructed him to report to the Congress by July 1, 1967, the findings of such survey with appropriate recommendations.

EX. ORD. NO. 9607. FORTY-EIGHT HOUR WARTIME WORKWEEK

Ex. Ord. No. 9607, Aug. 30, 1945, 10 F.R. 11191, provided:

By virtue of the authority vested in me by the Constitution and statutes as President of the United States it is ordered that Executive Order 9301 of February 9, 1943 [8 F.R. 1825] (formerly set out as note under this section), establishing a minimum wartime workweek of forty-eight hours, be, and it is hereby, revoked.

CROSS REFERENCES

Action by employee to recover unpaid overtime compensation and liquidated damages, see section 216 of this title.

American Samoa employees not subject to provisions of this section, see section 213 of this title.

Employees performing services within foreign country or certain territory under jurisdiction of United States as not subject to provisions of this section, see section 213 of this title.

Forty-hour workweek for employees covered by Walsh-Healey Act, see section 35 of Title 41, Public Contracts.

Hours of labor on public works, see section 327 et seq. of Title 40, Public Buildings, Property, and Works.

Hours worked defined, see section 203 of this title.

Liability for overtime work performed prior to July 20, 1949, see section 216b of this title.

Preliminary and post-liminary activities not compensable, see section 254 of this title.

Rate of overtime for employees covered by Walsh-Healey Act, see section 40 of Title 41, Public Contracts.

Walsh-Healey Act inapplicable to employees entering into agreements with employees under paragraphs 1 or 2 of subsection (b) of this section, see section 35 of Title 41.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 203, 213 to 216, 216b, 218 of this title; title 41 sections 35, 355.

§ 208. Wage rates in Puerto Rico and the Virgin Islands

(a) Congressional policy; recommendation of wage rate by industry committee

The policy of this chapter with respect to industries or enterprises in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c) of this title. The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classifications therein. Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title shall be reviewed

by such a Committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Investigation of industry condition by industry committee; matters considered

Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this chapter. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206(c) of this title, unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage.

(c) Classifications within industry; recommendation of wage rate

The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that in effect under paragraph (1) or (5) of section 206(a) of this title (as the case may be)) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classification should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) Report by industry committee; publication in Federal Register

The industry committee shall file with the Secretary a report containing its findings of fact and recommendations with respect to the matters referred to it. Upon the filing of such report, the Secretary shall publish such recommendations in the Federal Register and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication.

(e) Orders

Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein.

(f) Due notice of hearings by publication in Federal Register

Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give general notice to interested persons.

(June 25, 1938, ch. 676, § 8, 52 Stat. 1064; Oct. 26, 1949, ch. 736, § 8, 63 Stat. 915; Aug. 12, 1955, ch. 867, §§ 4, 5(b)–(e), 69 Stat. 711, 712; Aug. 25, 1958, Pub. L. 85–750, 72 Stat. 844; May 5, 1961, Pub. L. 87–30, § 7, 75 Stat. 70; Apr. 8, 1974, Pub. L. 93–259, § 5(c)(1), (d), 88 Stat. 58.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–259, § 5(d)(1), (2), substituted in first sentence "the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c) of this title" for "the minimum wage prescribed in paragraph (1) of section 206(a) of this title in each such industry" and in third sentence "the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title" for "the minimum wage rate prescribed in paragraph (1) of section 206(a) of this title".

Subsec. (b). Pub. L. 93–259, § 5(c)(1), required the committee to recommend the minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206(c) of this title, unless the industry is unable to pay that wage as established by substantial documentary evidence or in the case of employees of public agencies other appropriate information in the record.

Subsec. (c). Pub. L. 93–259, § 5(d)(3), substituted "in effect under paragraph (1) or (5) of section 206(a) of this title (as the case may be)" for "prescribed in paragraph (1) of section 206(a) of this title".

1961—Subsec. (a). Pub. L. 87–30 inserted "or enterprises" following "industries" in the first sentence and "or in any enterprise engaged in commerce or in the production of goods for commerce" following "production of goods for commerce" in the second sentence.

1958—Subsec. (a). Pub. L. 85–750 provided for biennial instead of an annual review of rates and for additional review, in Secretary's discretion, during any biennial period.

1955—Subsec. (a). Act Aug. 12, 1955, § 4, required review of minimum wage rates at least once each fiscal year.

Subsec. (b). Act Aug. 12, 1955, § 5(b), permitted the industry committee or any authorized subcommittee to hear witnesses and receive evidence only after due notice.

Subsec. (c). Act Aug. 12, 1955, § 5(c), eliminated provisions which applied to the Administrator in determining classifications and minimum wage rates.

Subsec. (d). Act Aug. 12, 1955, § 5(d), eliminated provisions which required hearings to be held on the recommendations of the industry committee, and inserted provisions requiring publication of recommendations and providing that such recommendations should take effect 15 days after the date of publication.

Subsec. (e). Act Aug. 12, 1955, § 5(e), eliminated provisions which required due notice of orders by publication in the Federal Register and by other means as the Administrator deemed reasonably calculated to give general notice to interested persons.

1949—Subsec. (a). Act Oct. 26, 1949, stated policy of chapter with regard to minimum wage rate of industries in Puerto Rico and the Virgin Islands and limited application of section to such industries.

Subsec. (b). Act Oct. 26, 1949, required an industry committee in fixing minimum wage rates not to give a competitive advantage to industries in Puerto Rico and the Virgin Islands over United States industries.

Subsec. (c). Act Oct. 26, 1949, omitted "for any industry" preceding "shall recommend" and substituted "that prescribed in paragraph (1) of section 206(a) of this title" for "40 cents an hour" within parenthesis in first sentence.

Subsec. (d). Act Oct. 26, 1949, reenacted subsec. (d) without change.

Subsec. (e). Act Oct. 26, 1949, redesignated former subsec. (f) as (e). Former subsec. (e) was omitted.

Subsec. (f). Act Oct. 26, 1949, redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Act Oct. 26, 1949, omitted subsec. (g). Former subsec. (g) redesignated (f).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 12, 1955, which amended subsec. (a), provided in part that the amendment of such subsec. (a) should be effective July 1, 1956.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Labor and functions of all agencies and employees of that Department were, with the exception of the functions vested by the Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by the Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

SECRETARY OF LABOR

The term "Secretary" as meaning the Secretary of Labor, see section 6 of act Aug. 12, 1955, set out as a note under section 204 of this title.

ORDERS, REGULATIONS, INTERPRETATIONS OR AGREEMENTS PRIOR TO 1949 AMENDMENTS

Section 16(c) of act Oct. 26, 1949, provided that: "Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended [this chapter], on the effective date of this Act [ninety days from Oct. 26, 1949], shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this Act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this Act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this Act."

WAGE ORDERS ISSUED PRIOR TO JUNE 26, 1940, IN PUERTO RICO OR THE VIRGIN ISLANDS

Joint Res. June 26, 1940, ch. 432, § 3(d), 54 Stat. 616, provided as follows: "No wage orders issued by the Administrator pursuant to the recommendations of an industry committee made prior to the enactment of this joint resolution pursuant to section 8 (this section) of the Fair Labor Standards Act of 1938 shall after such enactment be applicable with respect to any employees engaged in commerce or in the production of goods for commerce in Puerto Rico or the Virgin Islands."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205, 210 of this title.

§ 209. Attendance of witnesses

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

(June 25, 1938, ch. 676, § 9, 52 Stat. 1065; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Labor and functions of all agencies and employees of that Department were, with the exception of the functions vested by the Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by the Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

"Secretary of Labor" was substituted for "Chief of the Children's Bureau" by 1946 Reorg. Plan No. 2. See Transfer of Functions note under section 203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 626 of this title.

§ 210. Court review of wage orders in Puerto Rico and the Virgin Islands

(a) Any person aggrieved by an order of the Secretary issued under section 208 of this title may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (including provision for the payment of an appropriate minimum wage rate), or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Administrator's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

(June 25, 1938, ch. 676, § 10, 52 Stat. 1065; Aug. 12, 1955, ch. 867, § 5(f), 69 Stat. 712; Aug. 28, 1958, Pub. L. 85-791, § 22, 72 Stat. 948; Apr. 8, 1974, Pub. L. 93-259, § 5(c)(2), 88 Stat. 58.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-259 inserted in the third sentence after "modify" the parenthetical phrase "(including provision for the payment of an appropriate minimum wage rate)".

1958—Subsec. (a). Pub. L. 85-791 substituted "transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee" for "served upon the Secretary, and thereupon the Secretary shall certify and file in the court a transcript of the record" in the second sentence, and inserted "as provided in section 2112 of title 28", and substituted "petition" for "transcript" in the third sentence.

1955—Subsec. (a). Act Aug. 12, 1955, amended subsec. (a) generally to make subsection conform to the new procedure applicable to Puerto Rico and the Virgin Islands.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

SECRETARY OF LABOR

The term "Secretary" as meaning the Secretary of Labor, see section 6 of act Aug. 12, 1955, set out as a note under section 204 of this title.

CROSS REFERENCES

Employees performing services within foreign country or certain territory under jurisdiction of United States as not subject to provisions of this section, see section 213 of this title.

§ 211. Collection of data

(a) Investigations and inspections

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of this chapter.

(b) State and local agencies and employees

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder.

(d) Homework regulations

The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

(June 25, 1938, ch. 676, § 11, 52 Stat. 1066; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, § 9, 63 Stat. 916.)

AMENDMENTS

1949—Subsec. (d). Act Oct. 26, 1949, added subsec. (d).

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

For transfer of functions of the Children's Bureau in the Department of Labor and the Chief of the Children's Bureau to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 2 of 1946, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Attendance of witnesses and production of books, papers, and documents, see section 209 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 212, 215, 626 of this title.

§ 212. Child labor provisions

(a) Restrictions on shipment of goods; prosecution; conviction

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) Investigations and inspections

The Secretary of Labor or any of his authorized representatives, shall make all investigations and inspections under section 211(a) of this title with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 217 of this title to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this chapter relating to oppressive child labor.

(c) Oppressive child labor

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

(d) Proof of age

In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

(June 25, 1938, ch. 676, § 12, 52 Stat. 1067; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, § 10, 63 Stat. 917; May 5, 1961, Pub. L. 87-30, § 8, 75 Stat. 70; Apr. 8, 1974, Pub. L. 93-259, § 25(a), 88 Stat. 72.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-259 added subsec. (d).

1961—Subsec. (c). Pub. L. 87-30 added the words "or in any enterprise engaged in commerce or in the production of goods for commerce".

1949—Subsec. (a). Act Oct. 26, 1949, § 10(a), omitted obsolete effective date at beginning of subsection and inserted proviso excepting good faith purchaser of goods produced by oppressive child labor.

Subsec. (c). Act Oct. 26, 1949, § 10(b) added subsec. (c).

EFFECTIVE DATE OF 1974 AMENDMENT

Subsec. (d) effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

For transfer of functions of the Children's Bureau in the Department of Labor and the Chief of the Children's Bureau to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 2 of 1946, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Employees performing services within foreign country or certain territory under juristiction of United States as not subject to provisions of this section, see section 213 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 211, 213, 215, 216 of this title.

§ 213. Exemptions

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 203(s)(4) of this title), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 203(s) of this title. A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

(3) any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year; or

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate

as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) Repealed. Pub. L. 93-259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69.

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) Repealed. Pub. L. 93-259, § 10(a), Apr. 8, 1974, 88 Stat. 63.

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) Repealed. Pub. L. 93-259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69.

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

(b) Maximum hour requirements

The provisions of section 207 of this title shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 304 of title 49; or

(2) any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of part I of the Interstate Commerce Act [49 U.S.C. 1 et seq.]; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C. 181 et seq.]; or

(4) Repealed. Pub. L. 93-259, § 11(c), Apr. 8, 1974, 88 Stat. 64.

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7) Repealed. Pub. L. 93-259, § 21(b)(3), Apr. 8, 1974, 88 Stat. 68.

(8) any employee (other than an employee of a hotel or motel who performs maid or custodial services) who is employed by an establishment which is a hotel, motel, or restaurant and who receives compensation for employment in excess of forty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 207(a) of this title; or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 206(a)(1) of this title; or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing

within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(18), (19) Repealed. Pub. L. 93-259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65.

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(22) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco; or

(23) Repealed. Pub. L. 93-259, § 10(b)(3), Apr. 8, 1974, 88 Stat. 64.

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution,

while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25) any employee who is engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and who receives compensation for employment in excess of—

(A) sixty hours in any workweek for not more than six workweeks in a year,

(B) fifty-six hours in any workweek for not more than four workweeks in that year,

(C) forty-eight hours in any workweek for not more than two workweeks in that year,

(D) forty-four hours in any workweek for not more than two workweeks in that year, and

(E) forty hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or

(26) any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugarcane into sugar (other than refined sugar) or syrup and who receives compensation for employment in excess of—

(A) sixty hours in any workweek for not more than six workweeks in a year,

(B) fifty-six hours in any workweek for not more than four workweeks in that year,

(C) forty-eight hours in any workweek for not more than two workweeks in that year, and

(D) forty-four hours in any workweek for not more than two workweeks in that year, and

(E) forty hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or

(27) any employee employed by an establishment which is a motion picture theater; or

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.

(c) Child labor requirements

(1) Except as provided in paragraph (2), the provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 212 of this title relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(d) Delivery of newspapers and wreathmaking

The provisions of sections 206, 207, and 212 of this title shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed prin-

cipally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) Maximum hour requirements and minimum wage employees

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3) of this title, except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3) of this title, that economic conditions warrant such action.

(f) Employment in foreign countries and certain United States territories

The provisions of sections 206, 207, 211 and 212 of this title shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462) [43 U.S.C. 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; Johnston Island; and the Canal Zone.

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 of this title provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 206 of this title provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) of this section if it were in an enterprise described in section 203(s) of this title.

(h) Maximum hour requirement: fourteen workweek limitation

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 207 of this title.

(June 25, 1938, ch. 676, § 13, 52 Stat. 1067; Aug. 9, 1939, ch. 605, 53 Stat. 1266; Oct. 26, 1949, ch. 736, § 11, 63 Stat. 917; Aug. 8, 1956, ch. 1035, § 3, 70 Stat. 1118; Aug. 30, 1957, Pub. L. 85-231, § 1(1), 71 Stat. 514; July 12, 1960, Pub. L. 86-624, § 21(b), 74 Stat. 417; May 5, 1961, Pub. L. 87-30, §§ 9, 10, 75 Stat. 71, 74; Sept. 23, 1966, Pub. L. 89-601, title II, §§ 201-204(a), (b), 205-212(a), 213-215(b), (c), 80 Stat. 833-838; Oct. 15, 1966, Pub. L. 89-670, § 8(e), 80 Stat. 943; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; June 23, 1972, Pub. L. 92-318, title IX, § 906(b)(1), 86 Stat. 375; Apr. 8, 1974, Pub. L. 93-259, §§ 6(c)(2), 7(b)(3), (4), 8, 9(b), 10, 11, 12(a), 13(a)-(c), 14-18, 20(a)-(c), 21(b), 22, 23, 25(b), 88 Stat. 61-69, 72.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (b)(2), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended. Part I of the Interstate Commerce Act is classified generally to chapter 1 (§ 1 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of Title 49 and Tables volume.

The Railway Labor Act, referred to in subsec. (b)(3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended.

Title II of the Railway Labor Act was added by act Apr. 10, 1936, ch. 166, 49 Stat. 1189, and is classified generally to subchapter II (§ 181 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code see section 151 of Title 45 and Tables volume.

The Outer Continental Shelf Lands Act, referred to in subsec. (f), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables volume.

CODIFICATION

In subsec. (a)(1), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1974—Subsec. (a)(2). Pub. L. 93-259, § 8(a), substituted "$225,000" for "$250,000" effective Jan. 1, 1975, Pub. L. 93-259, § 8(b), substituted "$200,000" for "$225,000" effective Jan. 1, 1976. Pub. L. 93-259, § 8(c), deleted "or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)" which followed "section 203(s) of this title" effective Jan. 1, 1977.

Subsec. (a)(9). Pub. L. 93-259, § 23(a)(1), repealed exemption provision respecting any employee employed by an establishment which is a motion picture theater, which is now covered by subsec. (b)(27) of this section.

Subsec. (a)(11). Pub. L. 93-259, § 10(a), repealed exemption provision respecting any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under former cl. (2) of subsec. (a) with respect to whom the provisions of sections 206 and 207 of this title would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month.

Subsec. (a)(13). Pub. L. 93-259, § 23(b)(1), repealed exemption provision respecting any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight, which is now covered by subsec. (b)(28) of this section.

Subsec. (a)(14). Pub. L. 93-259, § 9(b)(1), repealed exemption provision respecting any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco, which is now covered by subsec. (b)(22) of this section.

Subsec. (a)(15). Pub. L. 93-259, § 7(b)(3), added par. (15).

Subsec. (b)(2). Pub. L. 93-259, § 23(c), amended par. (2) (insofar as it relates to pipeline employees), inserting "engaged in the operation of a common carrier by rail and" after "employer".

Subsec. (b)(4). Pub. L. 93-259, § 11(a), effective May 1, 1974, inserted "who is" following "employee" and ", and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed" preceding the semi-colon. Pub. L. 93-259, § 11(b), substituted "forty-four hours" for "forty-eight hours" effective one year after May 1, 1974. Pub. L. 93-259, § 11(c), repealed subsec. (b)(4) effective two years after May 1, 1974.

Subsec. (b)(7). Pub. L. 93-259, § 21(b)(1), substituted "(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed" for ", if the rates and services of such railway or carrier are subject to regulation by a State or local agency" effective May 1, 1974. Pub. L. 93-259, § 21(b)(2), substituted "forty-four hours" for "forty-eight hours" effective one year after May 1, 1974. Pub. L. 93-259, § 21(b)(3) repealed subsec. (b)(7) effective two years after May 1, 1974.

Subsec. (b)(8). Pub. L. 93-259, §§ 12(a), 13(a), effective May 1, 1974, insofar as relating to nursing home employees, struck out exemption provision respecting any employee who is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises, and receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed, and insofar as relating to a hotel, motel, and restaurant employees, substituted "(A) any employee (other than an employee of a hotel or motel who performs maid or custodial services) who is" for "any employee", inserted preceding the semicolon "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed", and added subpar. (B). Pub. L. 93-259, § 13(b), effective one year after May 1, 1974, substituted "forty-six hours" for "forty-eight hours" in subparas. (A) and (B). Pub. L. 93-259, § 13(c), effective two years after May 1, 1974, substituted "forty-four hours" for "forty-six hours" in subpar. (B). Pub. L. 93-259, § 13(d), repealed subsec. (b)(8)(B) and eliminated the designation (A), effective three years after May 1, 1974.

Subsec. (b)(10). Pub. L. 93-259, § 14, incorporated existing paragraph in provisions designated as subpar. (A), deleted from the list references to trailers and aircraft, inserted reference to implements, and added subpar. (B) incorporating the references to trailers and aircraft.

Subsec. (b)(15). Pub. L. 93-259, § 20(a), deleted exemption provision respecting any employee engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities or in the processing of sugar beets, sugar-beet molasses, and sugarcane into sugar, which is now covered by subsecs. (b)(25) and (26) of this section.

Subsec. (b)(18). Pub. L. 93-259, § 15(a), effective May 1, 1974, inserted "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed." Pub. L. 93-259, § 15(b), effective one year after May 1, 1974, substituted "forty-four hours" for "forty-eight hours." Pub. L. 93-259, § 15(c), repealed subsec. (b)(18) effective two years after May 1, 1974.

Subsec. (b)(19). Pub. L. 93-259, § 16(a), effective one year after May 1, 1974, substituted "forty-four hours" for "forty-eight hours". Pub. L. 93-259, § 16(b), repealed subsec. (b)(19), effective two years after May 1, 1974.

Subsec. (b)(20). Pub. L. 93-259, § 6(c)(2)(A), added par. (20) effective May 1, 1974. Pub. L. 93-259, § 6(c)(2)(B), effective Jan. 1, 1975, made maximum hours provisions inapplicable during any workweek to any employee of a public agency employing during the workweek less than 5 employees.

Subsec. (b)(21). Pub. L. 93-259, § 7(b)(4), added par. (21).

Subsec. (b)(22). Pub. L. 93-259, § 9(b)(2), added par. (22).

Subsec. (b)(23). Pub. L. 93-259, § 10(b)(1), added par. (23), effective May 1, 1974. Pub. L. 93-259, § 10(b)(2),

substituted "forty-four hours" for "forty-eight hours" effective one year after May 1, 1974. Pub. L. 93-259, § 10(b)(3), repealed subsec. (b)(23) effective two years after May 1, 1974.

Subsec. (b)(24). Pub. L. 93-259, § 17, added par. (24).

Subsec. (b)(25). Pub. L. 93-259, § 20(b)(1), added par. (25) effective May 1, 1974. Pub. L. 93-259, § 20(b)(2), effective Jan. 1, 1975, substituted "sixty-six" for "seventy-two" in subpar. (A), "sixty" for "sixty-four" in subpar. (B), and "forty-six hours in any workweek for not more than two workweeks in that year, and" for "forty-eight hours in any other workweek in that year," in subpar. (D), and added subpar. (E). Pub. L. 93-259, § 20(b)(3), effective Jan. 1, 1976, substituted "sixty" for "sixty-six", "fifty-six" for "sixty", "forty-eight" for "fifty", "forty-four" for "forty-six", and "forty" for "forty-four".

Subsec. (b)(26). Pub. L. 93-259, § 20(c)(1), added par. (26) effective May 1, 1974. Pub. L. 93-259, § 20(c)(2), effective Jan. 1, 1975, substituted "sixty-six" for "seventy-two" in subpar. (A), "sixty" for "sixty-four" in subpar. (B), and "forty-six hours in any workweek for not more than two workweeks in that year, and" for "forty-eight hours in any other workweek in that year," in subpar. (D), and added subpar. (E). Pub. L. 93-259, § 20(c)(3), effective Jan. 1, 1976, substituted "sixty" for "sixty-six", "fifty-six" for "sixty", "forty-eight" for "fifty", "forty-four" for "forty-six", and "forty" for "forty-four".

Subsec. (b)(27). Pub. L. 93-259, § 23(a)(2), added par. (27).

Subsec. (b)(28). Pub. L. 93-259, § 23(b)(2), added par. (28).

Subsec. (c)(1). Pub. L. 93-259, § 25(b), deleted "with respect" following "shall not apply", changed the period of the sentence to a comma, and added ", if such employee—" and subpars. (A) to (C).

Subsec. (g). Pub. L. 93-259, § 18, added subsec. (g).

Subsec. (h). Pub. L. 93-259, § 22, added subsec. (h).

1972—Subsec. (a). Pub. L. 92-318 inserted "(except subsection (d) in the case of paragraph (1) of this subsection)" following introductory text "sections 206".

1966—Subsec. (a)(1). Pub. L. 89-601, § 214, inserted "(including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools)" following "professional capacity".

Subsec. (a)(2). Pub. L. 89-601, § 201(a), revised the retail or service establishment exemption so as to exempt employees of a retail or service establishment (other than an establishment or employee engaged in laundering or drycleaning or an establishment engaged in the operation of a hospital, school, or institution specifically included in the definition of the term "enterprise engaged in commerce or in the production of goods for commerce") if more than 50 per centum of the establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located and the establishment is not an enterprise described in section 203(s) of this title or the establishment has an annual dollar volume of sales which is less than $250,000.

Subsec. (a)(3). Pub. L. 89-601, §§ 201(b)(2), 202, repealed former subsec. (a)(3) which dealt with employees of laundry, cleaning, and fabric or clothing repair establishments doing more than 50 per centum of their annual dollar volume of business within the state in which the establishment is located and enacted a new subsec. (a)(3) dealing with employees of amusement or recreational establishments which do not operate for more than seven months in any calendar year or which had receipts over a six-month period which were not more than 33⅓ per centum of its average receipts for the other six months of such year.

Subsec. (a)(6). Pub. L. 89-601, § 203(a), limited the provisions exempting agricultural employees from the application of sections 206 and 207 of this title by narrowing the class of exempted agricultural employees to include only an employee employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, an employee who is the spouse, parent, child, or other member of his employer's immediate family, certain hand harvest laborers, or an employee principally engaged in the range production of livestock. See subsec. (b)(12) of this section.

Subsec. (a)(7). Pub. L. 89-601, § 215(c), extended coverage to include employees exempted by a certificate of the Secretary.

Subsec. (a)(8). Pub. L. 89-601, § 205, substituted "where published" for "where printed and published".

Subsec. (a)(9). Pub. L. 89-601, §§ 206(a), 207, repealed former subsec. (a)(9) covering employees of street, suburban, or interurban electric railways, or local trolleys or motor bus carriers not in a section 203(s) enterprise and enacted a new subsec. (a)(9) covering employees employed by motion picture theaters. See subsec. (b)(7) of this section.

Subsec. (a)(10). Pub. L. 89-601, §§ 204(a), 215(b)(1), repealed former subsec. (a)(10) relating to employees engaged in handling and processing of agricultural, horticultural, and dairy products and redesignated former subsec. (a)(11) as subsec. (a)(10). See section 207(d) of this title.

Subsec. (a)(11). Pub. L. 89-601, § 215(b)(1), redesignated former subsec. (a)(13) as subsec. (a)(11). Former subsec. (a)(11) redesignated as subsec. (a)(10).

Subsec. (a)(12). Pub. L. 89-601, §§ 206(b)(1), 215(b)(1), repealed former subsec. (a)(12) covering employees of employers engaged in the business of operating taxicabs and redesignated former (a)(14) as subsec. (a)(12). See subsec. (b)(17) of this section.

Subsec. (a)(13). Pub. L. 89-601, §§ 208, 215(b)(1), redesignated former subsec. (a)(15) as subsec. (a)(13) and, in subsec. (a)(13) as so redesignated, substituted "eight" for "twelve". Former subsec. (a)(13) redesignated as subsec. (a)(11).

Subsec. (a)(14). Pub. L. 89-601, § 215(b), redesignated former subsec. (a)(12) as subsec. (a)(14), and, at the end of subsec. (a)(14) as so redesignated, substituted a period for "; or". Former subsec. (a)(14) redesignated as subsec. (a)(12).

Subsec. (a)(15). Pub. L. 89-601, § 215(b)(1), redesignated former subsec. (a)(15) as subsec. (a)(13).

Subsec. (a)(16). Pub. L. 89-601, § 203(b), repealed subsec. (a)(16) which created an exemption for agricultural employees employed in livestock auctions. See subsec. (b)(13) of this section.

Subsec. (a)(17). Pub. L. 89-601, § 204(a), repealed subsec. (a)(17) dealing with country elevator operators. See subsec. (b)(14) of this section.

Subsec. (a)(18). Pub. L. 89-601, § 204(a), repealed subsec. (a)(18) dealing with cotton ginning employees. See subsec. (b)(15) of this section.

Subsec. (a)(19). Pub. L. 89-601, § 209(a), repealed subsec. (a)(19) covering employees of retail and service establishments that are primarily engaged in the business of selling automobiles, trucks, or farm implements. See subsec. (b)(10) of this section.

Subsec. (a)(20). Pub. L. 89-601, § 210(a), repealed subsec. (a)(20) covering employees of food retail or service establishments. See subsec. (b)(18) of this section.

Subsec. (a)(21). Pub. L. 89-601, § 215(b)(1), redesignated former subsec. (a)(21) as subsec. (a)(14).

Subsec. (a)(22). Pub. L. 89-601, § 204(a), repealed subsec. (a)(22) dealing with fruit and vegetable transportation employees. See subsec. (b)(16) of this section.

Subsec. (b)(1). Pub. L. 89-670 substituted "Secretary of Transportation" for "Interstate Commerce Commission".

Subsec. (b)(7). Pub. L. 89-601, § 206(c), narrowed the scope of the exemption from any employee of the covered transportation companies to drivers, operators, and conductors only and narrowed the range of covered transportation companies from any street, suburban, or interurban electric railway, or local trolley or motorbus carrier to only those of such named enterprises as have their rates and service subject to regulation by a state or local agency.

Subsec. (b)(8). Pub. L. 89-601, §§ 201(b)(1), 211, repealed former subsec. (b)(8) which named employees

of gasoline service stations as a group to which section 207 of this title shall not apply and enacted a new subsec. (b)(8) providing that section 207 of this title shall not apply with respect to hotel, motel, or restaurant employees and employees who receive compensation for employment in excess 48 hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed and who is employed by an institution other than a hospital primarily engaged in the care of the sick, the aged, or the mentally ill or defective residing on the premises.

Subsec. (b)(10). Pub. L. 89-601, §§ 209(b), 212(a), repealed former subsec. (b)(10) which granted an unlimited overtime exemption covering petroleum distribution employees and enacted a new subsec. (b)(10) covering salesmen, partsmen, or mechanics primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers. See subsec. (b)(3) of this section.

Subsecs. (b)(12) to (19). Pub. L. 89-601, §§ 203(c)(B), 204(b), 206(b)(2), 210(b), added clauses (12) to (19).

Subsec. (c). Pub. L. 89-601, § 203(d), added provision making section 212 of this title relating to child labor applicable to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

Subsec. (f). Pub. L. 89-601, § 213, inserted reference to Eniwetok Atoll, Kwajalein Atoll, and Johnston Island.

1961—Subsec. (a)(1). Pub. L. 87-30, § 9, substituted "any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to, the provisions of the Administrative Procedure Act" and the exception provision for "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator)".

Subsec. (a)(2). Pub. L. 87-30, § 9, inserted the conditional provision, including subclauses (i) to (iv).

Subsec. (a)(5). Pub. L. 87-30, § 9, inserted "propagating" and "or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations" following "taking" and "life", respectively, and substituted "loading and unloading when performed by any such employee" for "including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing (other than canning), marketing, freezing, curing, storing, or distributing the above products or byproducts thereof", now incorporated in subsec. (b)(4) of this section.

Subsec. (a)(7). Pub. L. 87-30, § 9, substituted "Secretary" for "Administrator".

Subsec. (a)(9). Pub. L. 87-30, § 9, substituted "not in an enterprise described in section 203(s)(2) of this title" for "not included in other exemptions contained in this section.".

Subsec. (a)(10). Pub. L. 87-30, § 9, substituted "Secretary" for "Administrator" and eliminated "ginning" following "storing".

Subsec. (a)(11). Pub. L. 87-30, § 9, substituted "by an independently owned public telephone company" for "in a public telephone exchange".

Subsec. (a)(13). Pub. L. 87-30, § 9, substituted "which qualifies as an exempt retail or service establishment under clause (2) of this subsection" for "as defined in clause (2) of this subsection".

Subsec. (a)(14). Pub. L. 87-30, § 9, added "on a vessel other than an American vessel".

Subsecs. (a)(16) to (22). Pub. L. 87-30, § 9, added clauses (16) to (22).

Subsec. (b)(4). Pub. L. 87-30, § 9, extended the exemption to any employee in the processing, marketing, freezing, curing, storing, packing for shipment, or distributing of aquatic forms of life, formerly contained in subsec. (a)(5) of this section.

Subsecs. (b)(6) to (11). Pub. L. 87-30, § 9, added clauses (6) to (11).

Subsec. (d). Pub. L. 87-30, § 10, extended the nonapplicability of sections 206, 207, and 212 of this title to any homeworker engaged in the making of evergreen wreaths.

1960—Subsec. (f). Pub. L. 86-624 eliminated "Alaska; Hawaii;" preceding "Puerto Rico".

1957—Subsec. (f). Pub. L. 85-231 added subsec. (f).

1956—Subsec. (e). Act Aug. 8, 1956, added subsec. (b).

1949—Subsec. (a)(2). Act Oct. 26, 1949, clarified exemption by defining term "retail or service establishment" and stated conditions under which exemption shall apply.

Subsec. (a)(3). Act Oct. 26, 1949, redesignated former cl. (3) as (14) and added cl. (3) providing a limited exemption to employees of laundries and establishments engaged in laundering, cleaning, or repairing clothing of fabrics.

Subsec. (a)(4). Act Oct. 26, 1949, redesignated former cl. (4) as subsec. (b)(3) and cl. (4) providing limited exemption to employees of retail establishments making or processing goods.

Subsec. (a)(5). Act Oct. 26, 1949, omitted canning of fish, shellfish, etc., which is now covered by subsec. (b)(4).

Subsec. (a)(6). Act Oct. 26, 1949, added irrigation workers to the exemption.

Subsec. (a)(8). Act Oct. 26, 1949, extended exemption to employees of newspapers published daily, increased circulation limitation from 3,000 to 4,000, and increased circulation area to include counties contiguous to county of publication.

Subsec. (a)(10). Act Oct. 26, 1949, omitted "to" preceding "any individual".

Subsec. (a)(11). Act Oct. 26, 1949, increased number of stations from, less than 500, to, not more than 750.

Subsecs. (a)(12) and (13). Act Oct. 26, 1949, added subsec. (a)(12) and (13).

Subsec. (a)(14). Act Oct. 26, 1949, redesignated former clause (3) as (14).

Subsec. (a)(15). Act Oct. 26, 1949, added subsec. (a)(15).

Subsec. (b). Act Oct. 26, 1949, added cls. (3), (4), and (5).

Subsec. (c). Act Oct. 26, 1949, substituted "outside of school hours for the school district where such employee is living while he is so employed" for prior provision relating to school attendance following "in agricultural", and added radio or television productions to the exemption.

Subsec. (d). Act Oct. 26, 1949, added subsec. (d).

1939—Subsec. (a). Act Aug. 9, 1939, added cl. (11).

Effective Date of 1974 Amendment

Section 6(c)(2)(B) of Pub. L. 93-259 provided that amendment of subsec. (b)(20) by such section shall be effective Jan. 1, 1975.

Section 8(a) to (c) of Pub. L. 93-259 provided that amendment of subsec. (a)(2) by such section shall be effective Jan. 1, 1975, 1976, and 1977, respectively.

Section 10(b)(2), (3) of Pub. L. 93-259 provided that amendment and repeal of subsec. (b)(23) by section 10(b)(2), (3) of Pub. L. 93-259 shall be effective one year and two years after May 1, 1974, respectively.

Section 11(b), (c) of Pub. L. 93-259 provided in part that amendment and repeal of subsec. (b)(4) by section 11(b), (c) of Pub. L. 93-259 shall be effective one year and two years after May 1, 1974, respectively.

Section 13(b) to (d) of Pub. L. 93-259 provided that amendment of subsec. (b)(8) by section 13(b) to (d) of Pub. L. 93-259 shall be effective one year, two years, and three years after May 1, 1974, respectively.

Section 15(b), (c) of Pub. L. 93-259 provided that amendment and repeal of subsec. (b)(18) by section

15(b), (c) of Pub. L. 93-259 shall be effective one year and two years after May 1, 1974, respectively.

Section 16(a), (b) of Pub. L. 93-259 provided that amendment and repeal of subsec. (b)(19) by section 16(a), (b) of Pub. L. 93-259 shall be effective one year and two years after May 1, 1974, respectively.

Section 20(b)(2), (3) of Pub. L. 93-259 provided in part that amendment of subsec. (b)(25) by section 20(b)(2), (3) of Pub. L. 93-259 shall be effective Jan. 1, 1975, and 1976, respectively.

Section 20(c)(2), (3) of Pub. L. 93-259 provided in part that amendment of subsec. (b)(26) by section 20(b)(2), (3) of Pub. L. 93-259 shall be effective Jan. 1, 1975, and 1976, respectively.

Section 21(b)(2), (3) of Pub. L. 93-259 provided that amendment and repeal of subsec. (b)(7) by section 21(b)(2), (3) of Pub. L. 93-259 shall be effective one year and two years after May 1, 1974, respectively.

Addition of subsecs. (a)(15), (b)(20) to (28), (g), (h), amendment of subsecs. (b)(2), (4), (7), (8), (10), (15), (18), (c)(1), and repeal of subsecs. (a)(9), (11), (13), and (14) by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89-670 effective 90 days after the Secretary of Transportation first takes office, or on any earlier date after Oct. 15, 1966, as the President prescribes and publishes in the Federal Register, see section 15(a) of Pub. L. 89-670, set out as an Effective Date note under section 1651 of Title 49, Transportation.

Amendment by Pub. L. 89-601 effective, except as otherwise provided in Pub. L. 89-601, on Feb. 1, 1967, see section 602 of Pub. L. 89-601, set out as an Effective Date of 1966 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1957 AMENDMENT

Pub. L. 85-231, § 2, provided that: "The amendments made by this Act [amending sections 213(f), 216(d), and 217 of this title] shall take effect upon the expiration of ninety days from the date of its enactment [Aug. 30, 1957]."

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plans) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated the Bureau of the Budget as the Office of Management and Budget.

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

PUBLIC AGENCY EMPLOYEES IN FIRE PROTECTION AND LAW ENFORCEMENT ACTIVITIES; STUDIES IN 1976 OF 1975 TOURS OF DUTY

Section 6(c)(3) of Pub. L. 93-259 authorized the Secretary of Labor to conduct a study in 1976 of the average number of hours in tours of duty in work periods in 1975 of certain employees of public agencies employed in fire protection and law enforcement activities, and publish the results of such studies in the Federal Register.

PIPELINE EMPLOYEES UNDER SUBSEC. (b)(2)

Section 23(c) of Pub. L. 93-259 provided in part for amendment of subsec. (b)(2) of this section "insofar as it relates to pipeline employees".

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

STUDY OF AGRICULTURAL HANDLING AND PROCESSING EXEMPTIONS AND RATES OF PAY IN EXEMPT FOOD SERVICE ENTERPRISES

Section 13 of Pub. L. 87-30 authorized the Secretary of Labor to study the complicated system of exemptions available for handling and processing agricultural products under this chapter and the complex problems involving rates of pay of certain employees exempted from the provisions of this chapter, and required the Secretary to submit the results of his studies along with his recommendations for proposed legislation to the second session of the Eighty-seventh Congress.

TRANSPORTATION OF MIGRANT FARM WORKERS

Subsec. (b)(1) as not applicable to employee with respect to whom Interstate Commerce Commission has power to establish qualifications and maximum hours of service by section 304(a)(3a) of Title 49, Transportation, see section 3 of act Aug. 3, 1956, set out as a note under section 304 of Title 49.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 206, 216, 218, 845, 848 of this title; title 5 sections 5343, 5349; title 42 sections 300e-9, 3056.

§ 214. Employment under special certificates

(a) Learners, apprentices, messengers

The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) Students

(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less

than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(c) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5) of this title or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate

under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(c) Handicapped workers

(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 206 of this title but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment,

at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3)(A) The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimums applicable under section 206 of this title or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

(d) Employment by schools

The Secretary may by regulation or order provide that sections 206 and 207 of this title shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.

(June 25, 1938, ch. 676, § 14, 52 Stat. 1068; Oct. 26, 1949, ch. 736, § 12, 63 Stat. 918; May 5, 1961, Pub. L. 87-30, § 11, 75 Stat. 74; Sept. 23, 1966, Pub. L. 89-601, title V, § 501, 80 Stat. 842; Apr. 8, 1974, Pub. L. 93-259, § 24(a), (b), 88 Stat. 69, 72.)

REFERENCES IN TEXT

The Fair Labor Standards Amendments of 1974, referred to in subsec. (b)(1)(B)(i)(II), (ii), is Pub. L. 93-259, Apr. 8, 1974, 88 Stat. 55. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 201 of this title and Tables volume.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-259, § 24(a), added subsec. (a) and struck out former subsec. (a) which had provided:

"The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivery letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe."

Subsec. (b). Pub. L. 93-259, § 24(a), added subsec. (b) and struck out former subsec. (b) which had provided:

"The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in retail or service establishments (not to exceed twenty hours in any workweek) or on a part-time or full-time basis in such establishments during school vacations, under special certificates issued pursuant to regulations of the Secretary, at a wage rate not less than 85 per centum of the minimum wage applicable under section 206 of this title, except that the proportion of student hours of employment to total hours of employment of all employees in any establishment may not exceed (1) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (2) in the case of a retail or service

establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this chapter for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966, such proportion for the corresponding month of the twelve-month period immediately prior to such date, or (3) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in (A) similar establishments of the same employer in the same general metropolitan area in which the new establishment is located, (B) similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Before the Secretary may issue a certificate under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection."

Subsec. (c). Pub. L. 93-259, § 24(a), (b), struck out former subsec. (c) and redesignated former subsec. (d) as (c). Former subsec. (c) had provided:

"The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by certificate or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in agriculture (not to exceed twenty hours in any workweek) or on a part-time or full-time basis in agriculture during school vacations, at a wage rate not less than 85 per centum of the minimum wage applicable under section 206 of this title. Before the Secretary may issue a certificate or order under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection."

Subsec. (d). Pub. L. 93-259, § 24(b), added subsec. (d). Former subsec. (d) redesignated (c).

1966—Pub. L. 89-601 provided for employment of full-time students regardless of age but in compliance with applicable child labor laws outside of their school hours in retail or service establishments or in agriculture at not less than 85 percent of the minimum wage in full-time positions during school vacations or in part-time positions not to exceed 20 hours in any workweek under certificates issued by the Secretary, set out the formula for the allowable proportion of student hours of employment to total hours of employment, provided for the employment of handicapped workers at rates down to 50 percent of the applicable minimum wage and at even lower rates for persons suffering severe impairment, authorized the establishment of special rates for handicapped workers employed in work activities centers, and defined work activity centers.

1961—Pub. L. 87-30 provided for employment of students in clause (1).

1949—Act Oct. 26, 1949, substituted "primarily" for "exclusively" following messengers employed.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

STUDY OF WAGES PAID HANDICAPPED CLIENTS IN SHELTERED WORKSHOPS

Section 605 of Pub. L. 89-601 instructed the Secretary of Labor to commerce a complete study of wage payments to handicapped clients of sheltered workshops and of the feasibility of raising existing wage standards in such workshops. The Secretary was directed to report to the Congress by July 1, 1967, the findings of such study with appropriate recommendations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 215 of this title.

§ 215. Prohibited acts; prima facie evidence

(a) After the expiration of one hundred and twenty days from June 25, 1938, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 or section 207 of this title, or in violation of any regulation or order of the Secretary issued under section 214 of this title; except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of this chapter, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

(2) to violate any of the provisions of section 206 or section 207 of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 of this title;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or institut-

ed or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 212 of this title;

(5) to violate any of the provisions of section 211(c) of this title, or any regulation or order made or continued in effect under the provisions of section 211(d) of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a)(1) of this section proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

(June 25, 1938, ch. 676, § 15, 52 Stat. 1068; Oct. 26, 1949, ch. 736, § 13, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263.)

AMENDMENTS

1949—Subsec. (a)(1). Act Oct. 26, 1949, § 13(a), added provision protecting purchaser in good faith in sale of goods produced in violation of this chapter.

Subsec. (a)(5). Act Oct. 26, 1949, § 13(b), inserted "or any regulation or order made or continued in effect under the provisions of section 211(d) of this title" following "211(c) of this title".

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Prohibition of age discrimination under this section, see section 626 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 216, 217, 626 of this title.

§ 216. Penalties

(a) Fines and imprisonment

Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee and of any employee to become a party plantiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on

order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

(d) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [29 U.S.C. 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) of this title is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 206(a)(3) of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e) Civil penalties for child labor violations

Any person who violates the provisions of section 212 of this title, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be—

(1) deducted from any sums owing by the United States to the person charged;

(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(3) ordered by the court, in an action brought for a violation of section 215(a)(4) of this title, to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of such penalty shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, and regulations to be promulgated by the Secretary. Sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 9a of this title.

(June 25, 1938, ch. 676, § 16, 52 Stat. 1069; May 14, 1947, ch. 52, § 5(a), 61 Stat. 87; Oct. 26, 1949, ch. 736, § 14, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263; Aug. 8, 1956, ch. 1035, § 4, 70 Stat. 1118; Aug. 30, 1957, Pub. L. 85-231, § 1(2), 71 Stat. 514; May 5, 1961, Pub. L. 87-30, § 12(a), 75 Stat. 74; Sept. 23, 1966, Pub. L. 89-601, title VI, § 601(a), 80 Stat. 844; Apr. 8, 1974, Pub. L. 93-259, §§ 6(d)(1), 25(c), 26, 88 Stat. 61, 72, 73.)

REFERENCES IN TEXT

The Portal-to-Portal Act of 1947, referred to in subsec. (d), is act May 14, 1947, ch. 52, 61 Stat. 84, as amended, which is classified principally to chapter 9 (§ 251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 251 of this title and Tables volume.

The effective date of this amendment of subsection (d), referred to in subsec. (d), occurred upon the expiration of 90 days after Aug. 30, 1957. See section 2 of Pub. L. 85-231, set out as an Effective Date of 1957 Amendment note under section 213 of this title.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93-259, § 6(d)(1), substituted in second sentence "maintained against any employer (including a public agency) in any Federal or State court" for "maintained in any court".

Subsec. (c). Pub. L. 93-259, § 26, in revising first three sentences, reenacted first sentence, substituting "Secretary" for "Secretary of Labor"; included in second sentence provision for an action by the Secretary for liquidated damaged and deleted requirement of a written request by an employee claiming unpaid minimum wages or unpaid overtime compensation with the Secretary of Labor prior to an action by the Secretary and proviso prohibiting any action in any case involving an issue of law not settled finally by the courts and depriving courts of jurisdiction of any action or proceeding involving the issue of law not settled finally; and substituted third sentence "The right provided by subsection (b) of this section to bring by or on behalf of any employee and of any employees to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary." for "The consent of any employee to the bringing of any such action by the Secretary of Labor, unless such action is dismissed without prejudice on motion of the Secretary of Labor, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid wages or unpaid overtime compensation and an additional equal amount as liquidated damages."

Subsec. (e). Pub. L. 93-259, § 25(c), added subsec. (e).

1966—Subsec. (c). Pub. L. 89-601 substituted a reference to "statutes of limitations" for a reference to "two-year statute of limitations".

1961—Subsec. (b). Pub. L. 87-30 provided for termination of right of action upon commencement of injunction proceedings by the Secretary of Labor.

1957—Subsec. (d). Pub. L. 85-231 added clauses (1) and (2), and designated existing provisions as clause (3).

1956—Subsec. (d). Act Aug. 8, 1956, added subsec. (d).

1949—Subsec. (c). Act Oct. 26, 1949, added subsec. (c).

1947—Subsec. (b). Act May 14, 1947, struck out provisions relating to the designation by employee or employees of an agent or representative to maintain an action under this section for and on behalf of all employees similarly situated and added provisions relating to the requirement that no employee shall be a party plaintiff unless he gives his consent in writing and such consent is filed with the court.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-601 effective, except as otherwise provided in Pub. L. 89-601, on Feb. 1, 1967, see section 602 of Pub. L. 89-601, set out as an Effective Date of 1966 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of subsec. (d) by Pub. L. 85-231 effective upon expiration of ninety days from Aug. 30, 1957, see section 2 of Pub. L. 85-231, set out as an Effective Date of 1957 Amendment note under section 213 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

Subsec. (b) of section 5 of act May 14, 1947, provided that the amendment of this section by subsec. (a) of said section 5 should be applicable only to actions commenced under this chapter on or after May 14, 1947.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

CONSTRUCTION OF 1949 AMENDMENTS WITH PORTAL-TO-PORTAL ACT OF 1947

Section 16(b) of act Oct. 26, 1949, provided that: "Except as provided in section 3(o) [section 203(o) of this title] and in the last sentence of section 16(c) of the Fair Labor Standards Act of 1938, as amended [section 216(e) of this title], no amendment made by this Act [amending sections 202, 208, 211 to 217 of this title] shall be construed as amending, modifying, or repealing any provisions of the Portal-to-Portal Act of 1947."

RETROACTIVE EFFECT OF 1949 AMENDMENTS; LIMITATION OF ACTIONS

Section 16(d) of act Oct. 26, 1949, provided that actions based upon acts or omissions occurring prior to the effective date of act Oct. 26, 1949, which was to be effective ninety days after Oct. 26, 1949, were not prevented by the amendments made to sections 202 to 208, and 211 to 217 of this title by such act, so long as such actions were instituted within two years from such effective date.

CROSS REFERENCES

Amount in controversy immaterial in action arising under act of Congress regulating commerce, see Reviser's note set out under section 1331 of Title 28, Judiciary and Judicial Procedure.

Applicability of "area of production" regulations to employers, see section 261 of this title.

Determination of commencement of future actions, see section 256 of this title.

Extra compensation creditable toward overtime compensation, see section 207 of this title.

Injunction by Secretary of Labor to restrain violations of section 215 of this title, see section 217 of this title.

Jurisdiction of actions arising under act of Congress regulating commerce, see section 1337 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction of claims compensable by contract or custom, see section 252 of this title.

Liability for overtime work performed prior to July 20, 1949, see section 216b of this title.

Liability of employers to United States for violation of Walsh-Healey Act, see section 36 of Title 41, Public Contracts.

Limitation of action under this section, commenced on or after May 14, 1947, see section 255 of this title.

Liquidated damages denied where employer establishes defense of good faith, see section 260 of this title.

Minimum wages payable to employees, see section 206 of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Rate of compensation for overtime, see section 207 of this title.

Reliance by employer in future on administrative rulings as defense, see section 259 of this title.

Reliance by employer on past administrative rulings as defense, see section 258 of this title.

Removal of actions from state courts, see section 1441 et seq. of Title 28, Judiciary and Judicial Procedure.

Venue of action not founded on diversity of citizenship, see section 1391 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 255, 260, 626 of this title.

§ 216a. Repealed. Oct. 26, 1949, ch. 736, § 16(f), 63 Stat. 920

Section, act July 20, 1949, ch. 352, § 2, 63 Stat. 446, related to liability for overtime work performed prior to July 20, 1949, and is now covered by section 216b of this title.

§ 216b. Liability for overtime work performed prior to July 20, 1949

No employer shall be subject to any liability or punishment under this chapter (in any action or proceeding commenced prior to or on or after January 24, 1950), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949, for such work was at least equal to the compensation which

would have been payable for such work had subsections (d)(6), (7) and (g) of section 207 of this title been in effect at the time of such payment.

(Oct. 26, 1949, ch. 736, § 16(e), 63 Stat. 920.)

CODIFICATION

Section was not enacted as part of act June 25, 1938, ch. 676, 52 Stat. 1060, known as the Fair Labor Standards Act of 1938, which comprises this chapter, but was enacted as part of the Fair Labor Standards Amendments of 1949.

January 24, 1950, was substituted for "the effective date of this Act". See Effective Date of 1949 Amendment note set out under section 202 of this title.

§ 217. Injunction proceedings

The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 215 of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title).

(June 25, 1938, ch. 676, § 17, 52 Stat. 1069; Oct. 26, 1949, ch. 736, § 15, 63 Stat. 919; Aug. 30, 1957, Pub. L. 85-231, § 1(3), 71 Stat. 514; July 12, 1960, Pub. L. 86-624, § 21(c), 74 Stat. 417; May 5, 1961, Pub. L. 87-30, § 12(b), 75 Stat. 74.)

AMENDMENTS

1961—Pub. L. 87-30 substituted ", including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title" for ": *Provided*, That no court shall have jurisdiction, in any action brought by the Administrator to restrain such violations, to order the payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages in such action".

1960—Pub. L. 86-624 eliminated the District Court for the Territory of Alaska.

1957—Pub. L. 85-231 included the District Court of Guam within the enumeration of courts having jurisdiction of injunction proceedings.

1949—Act Oct. 26, 1949, included a more precise description of United States courts having jurisdiction to restrain violations and added proviso denying jurisdiction to order payment of unpaid minimum wages, overtime, and liquidated damages in injunction proceedings.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as an Effective Date of 1961 Amendment note under section 203 of this title.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85-231 effective upon expiration of ninety days from Aug. 30, 1957, see section 2 of Pub. L. 85-231, set out as an Effective Date of 1957 Amendment note under section 213 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as an Effective Date of 1949 Amendment note under section 202 of this title.

CROSS REFERENCES

Action by employee to recover unpaid minimum wages or unpaid overtime compensation and liquidated damages, see section 216 of this title.

Action by Secretary of Labor to recover unpaid minimum wages or unpaid overtime compensation and liquidated damages, see section 216 of this title.

Child labor provisions, see section 212 of this title.

Criminal penalty for violation of section 215 of this title, see section 216 of this title.

Duty of employer to keep and preserve employment records, see section 211 of this title.

Prohibited acts; prima facie evidence, see section 215 of this title.

Secretary of Labor authorized to bring all actions under this section to enjoin unlawful child labor acts or practices, see section 212 of this title.

Secretary of Labor authorized to bring all injunctive actions under this section to restrain violations of this chapter, see section 211 of this title.

Venue of action not founded on diversity of citizenship, see section 1391 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 212, 216, 626 of this title.

§ 218. Relation to other laws

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

(b) Notwithstanding any other provision of this chapter (other than section 213(f) of this title) or any other law—

(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of title 5, or

(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

shall have his basic compensation fixed or adjusted at a wage rate that is not less than the appropriate wage rate provided for in section 206(a)(1) of this title (except that the wage rate provided for in section 206(b) of this title shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime com-

pensation set at an hourly rate not less than the overtime rate provided for in section 207(a)(1) of this title.

(June 25, 1938, ch. 676, § 18, 52 Stat. 1069; Sept. 23, 1966, Pub. L. 89-601, title III, § 306, 80 Stat. 841; Sept. 11, 1967, Pub. L. 90-83, § 8, 81 Stat. 222.)

AMENDMENTS

1967—Subsec. (b). Pub. L. 90-83 substituted reference to section 5102(c)(7) of title 5 for reference to par. (7) of section 202 of the Classification Act of 1949 to reflect the amendment of section 5341(a) of title 5 by section 1(97) of Pub. L. 90-83 and struck out provision covering employees described in section 7474 of title 10 in view of the repeal of section 7474 of title 10 by Pub. L. 89-554.

1966—Pub. L. 89-601 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-601 effective, except as otherwise provided in Pub. L. 89-601, on Feb. 1, 1967, see section 602 of Pub. L. 89-601, set out as an Effective Date of 1966 Amendment note under section 203 of this title.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

§ 219. Separability of provisions

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(June 25, 1938, ch. 676, § 19, 52 Stat. 1069.)

CHAPTER 9—PORTAL-TO-PORTAL PAY

Sec.
- 251. Congressional findings and declaration of policy.
- 252. Relief from certain existing claims under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act.
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- 253. Compromise and waiver.
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- 259. Reliance in future on administrative rulings, etc.
- 260. Liquidated damages.
- 261. Applicability of "area of production" regulations.
- 262. Definitions.

§ 251. Congressional findings and declaration of policy

(a) The Congress finds that the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], has been interpreted judicially in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand, (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; (3) there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; (5) there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in; (6) voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created; (7) the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged; (8) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid; (9) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and (10) serious and adverse effects upon the revenues of Federal, State, and local governments would occur.

The Congress further finds that all of the foregoing constitutes a substantial burden on

commerce and a substantial obstruction to the free flow of goods in commerce.

The Congress, therefore, further finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter be enacted.

The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey [41 U.S.C. 35 et seq.] and Bacon-Davis [40 U.S.C. 276a et seq.] Acts and that it is, therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter shall apply to the Walsh-Healey Act and the Bacon-Davis Act.

(b) It is declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils (1) to relieve and protect interstate commerce from practices which burden and obstruct it; (2) to protect the right of collective bargaining; and (3) to define and limit the jurisdiction of the courts.

(May 14, 1947, ch. 52, § 1, 61 Stat. 84.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

This chapter, referred to in subsec. (a), was in the original, this Act, meaning act May 14, 1947, ch. 52, 61 Stat. 84, known as the Portal-to-Portal Act of 1947, which enacted this chapter and amended section 216 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables volume.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsec. (a), are defined for purposes of this chapter in section 262 of this title.

SHORT TITLE

Section 15 of act May 14, 1947 provided that: "This Act [enacting this chapter and amending section 216 of this title] may be cited as the 'Portal-to-Portal Act of 1947'."

SEPARABILITY OF PROVISIONS

Section 14 of act May 14, 1947, provided: "If any provision of this Act [see Short Title note above] or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby."

§ 252. Relief from certain existing claims under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act

(a) Liability of employer

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.] the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.] (in any action or proceeding commenced prior to or on or after May 14, 1947), on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any activity of an employee engaged in prior to May 14, 1947, except an activity which was compensable by either—

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee was employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(b) Compensable activity

For the purposes of subsection (a) of this section, an activity shall be considered as compensable under such contract provision or such custom or practice only when it was engaged in during the portion of the day with respect to which it was so made compensable.

(c) Time of employment

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], of the Walsh-Healey Act [41 U.S.C. 35 et seq.], or of the Bacon-Davis Act [40 U.S.C. 276a et seq.], in determining the time for which an employer employed an employee there shall be counted all that time, but only that time, during which the employee engaged in activities which were compensable within the meaning of subsections (a) and (b) of this section.

(d) Jurisdiction

No court of the United States, of any State, Territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any action or proceeding, whether instituted prior to or on or after May 14, 1947, to enforce liability or impose punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], under the Walsh-Healey Act [41 U.S.C. 35 et seq.], or under the Bacon-Davis Act [40 U.S.C. 276a et seq.], to the extent that such action or proceeding seeks to enforce any liability or impose any punishment with respect to an activity which was not compensable under subsections (a) and (b) of this section.

(e) Assignment of actions

No cause of action based on unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], which accrued prior to May 14, 1947, or any interest in such cause of action, shall hereafter be assignable, in whole or in part, to the extent

that such cause of action is based on an activity which was not compensable within the meaning of subsections (a) and (b) of this section.

(May 14, 1947, ch. 52, § 2, 61 Stat. 85.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a), (c) to (e), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsecs. (a), (c) to (e), are defined for purposes of this chapter in section 262 of this title.

CROSS REFERENCES

Action by employee for recovery of unpaid minimum wages or unpaid overtime compensation and liquidated damages under Fair Labor Standards Act, see section 216 of this title.

Action by employee of Government contractor under Bacon-Davis Act for wages against contractor and sureties, see section 276a-2 of Title 40, Public Buildings, Property, and Works.

Action by Secretary of Labor for recovery of unpaid minimum wages or unpaid overtime compensation and liquidated damages under Fair Labor Standards Act, see section 216 of this title.

Action by United States against contractor for liquidated damages for violation of Walsh-Healey Act, see section 36 of Title 41, Public Contracts.

Liability of employer for activities compensable by express contract or custom or practice, see section 254 of this title.

Maximum hours—
- Fair Labor Standards Act, see section 207 of this title.
- Walsh-Healey Act, see section 35 of Title 41, Public Contracts.

Minimum wages—
- Bacon-Davis Act, see section 276a of Title 40, Public Buildings, Property, and Works.
- Fair Labor Standards Act, see section 216 of this title.
- Walsh-Healey Act, see section 35 of Title 41, Public Contracts.

Rate of overtime compensation—
- Fair Labor Standards Act, see section 207 of this title.
- Walsh-Healey Act, see section 40 of Title 41, Public Contracts.

§ 253. Compromise and waiver

(a) Compromise of certain existing claims under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, or the Bacon-Davis Act; limitations

Any cause of action under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], which accrued prior to May 14, 1947, or any action (whether instituted prior to or on or after May 14, 1947) to enforce such a cause of action, may hereafter be compromised in whole or in part, if there exists a bona fide dispute as to the amount payable by the employer to his employee; except that no such action or cause of action may be so compromised to the extent that such compromise is based on an hourly wage rate less than the minimum required under such Act, or on a payment for overtime at a rate less than one and one-half times such minimum hourly wage rate.

(b) Waiver of liquidated damages under Fair Labor Standards Act of 1938

Any employee may hereafter waive his right under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], to liquidated damages, in whole or in part, with respect to activities engaged in prior to May 14, 1947.

(c) Satisfaction

Any such compromise or waiver, in the absence of fraud or duress, shall, according to the terms thereof, be a complete satisfaction of such cause of action and a complete bar to any action based on such cause of action.

(d) Retroactive effect of section

The provisions of this section shall also be applicable to any compromise or waiver heretofore so made or given.

(e) Definition

As used in this section, the term "compromise" includes "adjustment", "settlement", and "release".

(May 14, 1947, ch. 52, § 3, 61 Stat. 86.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a) and (b), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsec. (a), are defined for purposes of this chapter in section 262 of this title.

§ 254. Relief from liability and punishment under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, and the Bacon-Davis Act for failure to pay minimum wage or overtime compensation

(a) Activities not compensable

Except as provided in subsection (b) of ths section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after May 14, 1947—

(1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) activities which are preliminary to or postliminary to said principal activity or activities,

which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

(b) Compensability by contract or custom

Notwithstanding the provisions of subsection (a) of this section which relieve an employer from liability and punishment with respect to any activity, the employer shall not be so relieved if such activity is compensable by either—

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(c) Restriction on activities compensable under contract or custom

For the purposes of subsection (b) of this section, an activity shall be considered as compensable under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

(d) Determination of time employed with respect to activities

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], of the Walsh-Healey Act [41 U.S.C. 35 et seq.], or of the Bacon-Davis Act [40 U.S.C. 276a et seq.], in determining the time for which an employer employs an employee with respect to walking, riding, traveling, or other preliminary or postliminary activities described in subsection (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of subsections (b) and (c) of this section.

(May 14, 1947, ch. 52, § 4, 61 Stat. 86.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a) and (d), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsecs. (a) and (d), are defined for purposes of this chapter in section 262 of this title.

CROSS REFERENCES

Exclusion from hours worked of time spent changing clothes or washing up, see section 203 of this title.

§ 255. Statute of limitations

Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.]—

(a) if the cause of action accrues on or after May 14, 1947—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

(b) if the cause of action accrued prior to May 14, 1947—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c) of this section, every such action shall be forever barred unless commenced within the shorter of such two periods;

(c) if the cause of action accrued prior to May 14, 1947, the action shall not be barred by paragraph (b) of this section if it is commenced within one hundred and twenty days after May 14, 1947 unless at the time commenced it is barred by an applicable State statute of limitations;

(d) with respect to any cause of action brought under section 216(b) of this title against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.

(May 14, 1947, ch. 52, § 6, 61 Stat. 87; Sept. 23, 1966, Pub. L. 89-601, title VI, § 601(b), 80 Stat. 844; Apr. 8, 1974, Pub. L. 93-259, § 6(d)(2)(A), 88 Stat. 61.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a) and (d), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsec. (a), are defined for purposes of this chapter in section 262 of this title.

Effective Date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (d), means May 1, 1974, except as otherwise specifically provided, under provisions of section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-259 added subsec. (d).

1966—Subsec. (a). Pub. L. 89-601 inserted provision allowing causes of action arising out of willful violations to be commenced within three years after the cause of action accrued.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-601 effective, except as otherwise provided in Pub. L. 89-601, on Feb. 1, 1967, see section 602 of Pub. L. 89-601, set out as an Effective Date of 1966 Amendment note under section 203 of this title.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

CROSS REFERENCES

Time when action by Administrator of the Wage and Hour Division is deemed to be commenced for purposes of subsec. (a) of this section, see section 216 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 216, 217, 256, 257, 262, 626 of this title.

§ 256. Determination of commencement of future actions

In determining when an action is commenced for the purposes of section 255 of this title, an action commenced on or after May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant—

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

(May 14, 1947, ch. 52, § 7, 61 Stat. 88.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

The Walsh-Healey and Bacon-Davis Acts, referred to in text, are defined for purposes of this chapter in section 262 of this title.

§ 257. Pending collective and representative actions

The statute of limitations prescribed in section 255(b) of this title shall also be applicable (in the case of a collective or representative action commenced prior to May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.]) to an individual claimant who has not been specifically named as a party plaintiff to the action prior to the expiration of one hundred and twenty days after May 14, 1947. In the application of such statute of limitations such action shall be considered to have been commenced as to him when, and only when, his written consent to become a party plaintiff to the action is filed in the court in which the action was brought.

(May 14, 1947, ch. 52, § 8, 61 Stat. 88.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

§ 258. Reliance on past administrative rulings, etc.

In any action or proceeding commenced prior to or on or after May 14, 1947 based on any act or omission prior to May 14, 1947, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation, of any agency of the United States, or any administrative practice or enforcement policy of any such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(May 14, 1947, ch. 52, § 9, 61 Stat. 88.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

The Walsh-Healey and Bacon-Davis Acts, referred to in text, are defined for purposes of this chapter in section 262 of this title.

§ 259. Reliance in future on administrative rulings, etc.

(a) In any action or proceeding based on any act or omission on or after May 14, 1947, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act [40 U.S.C. 276a et seq.], if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action

or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) of this section shall be—

(1) in the case of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.]—the Administrator of the Wage and Hour Division of the Department of Labor;

(2) in the case of the Walsh-Healey Act [41 U.S.C. 35 et seq.]—the Secretary of Labor, or any Federal officer utilized by him in the administration of such Act; and

(3) in the case of the Bacon-Davis Act [40 U.S.C. 276a et seq.]—the Secretary of Labor.

(May 14, 1947, ch. 52, § 10, 61 Stat. 89.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

The Walsh-Healey and Bacon-Davis Acts, referred to in text, are defined for purposes of this chapter in section 262 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 626 of this title.

§ 260. Liquidated damages

In any action commenced prior to or on or after May 14, 1947 to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 of this title.

(May 14, 1947, ch. 52, § 11, 61 Stat. 89; Apr. 8, 1974, Pub. L. 93-259, § 6(d)(2)(B), 88 Stat. 62.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

AMENDMENTS

1974—Pub. L. 93-259 substituted "section 216 of this title" for "section 216(b) of this title".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

§ 261. Applicability of "area of production" regulations

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of an activity engaged in by such employee prior to December 26, 1946, if such employer—

(1) was not so subject by reason of the definition of an "area of production", by a regulation of the Administrator of the Wage and Hour Division of the Department of Labor, which regulation was applicable at the time of performance of the activity even though at that time the regulation was invalid; or

(2) would not have been so subject if the regulation signed on December 18, 1946 (Federal Register, Vol. 11, p. 14648) had been in force on and after October 24, 1938.

(May 14, 1947, ch. 52, § 12, 61 Stat. 89.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 262. Definitions

(a) When the terms "employer", "employee", and "wage" are used in this chapter in relation to the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], they shall have the same meaning as when used in such Act of 1938.

(b) When the term "employer" is used in this chapter in relation to the Walsh-Healey Act [41 U.S.C. 35 et seq.] or Bacon-Davis Act [40 U.S.C. 276a et seq.] it shall mean the contractor or subcontractor covered by such Act.

(c) When the term "employee" is used in this chapter in relation to the Walsh-Healey Act [41 U.S.C. 35 et seq.] or the Bacon-Davis Act [40 U.S.C. 276a et seq.] it shall mean any individual employed by the contractor or subcontractor covered by such Act in the performance of his contract or subcontract.

(d) The term "Wash-Healey Act"[1] means the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (49 Stat. 2036), as amended [41 U.S.C. 35 et seq.]; and the term "Bacon-Davis Act" means the Act entitled "An Act to amend the Act approved

[1] So in original. Probably should read "Walsh-Healey Act".

March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings", approved August 30, 1935 (49 Stat. 1011), as amended [40 U.S.C. § 276a et seq.].

(e) As used in section 255 of this title the term "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(May 14, 1947, ch. 52, § 13, 61 Stat. 90.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see see section 201 of this title and Tables volume.

The "Bacon-Davis Act", which is defined for purposes of this chapter in subsec. (d), is generally known as the "Davis-Bacon Act". See Short Title note set out under section 276a of Title 41, Public Contracts.

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(b) Present or future Federal or State laws.

REPEAL OF CHAPTER

Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, known as the Employee Retirement Income Security Act of 1974, repealed this chapter effective Jan. 1, 1975. Section 111(a)(1) of Pub. L. 93-406 provided in part that this chapter shall continue to apply to any conduct and events which occurred before Jan. 1, 1975. See section 1031, of this title.

The Secretary of Labor was empowered by section 111(b)(2) of Pub. L. 93-406, in the case of any plan which has a plan year which begins before Jan. 1, 1975, and ends after Dec. 31, 1974 to postpone by regulation the effective date of the repeal of any provision of this chapter until the beginning of the first plan year of such plan which begins after Jan. 1, 1975. See section 1031(b)(2) of this title.

The substance of this chapter was incorporated into the Employee Retirement Income Security Act of 1974, according to the following table:

Old Title 29 Sections	*New Title 29 Sections*
301	1001
302	1002
303	1003
304	1002(16)(A), 1021
305	1022
306	1023
307	1024
308	1131 et seq.
308a	1026
308b	1027
308c	1028
308d	1112
308e	1142
308f	1137
309	1144

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1140, 1141 of this title.

§ 301. Findings and policy

(a) The Congress finds that the growth in size, scope, and numbers of employee welfare and pension benefit plans in recent years has been rapid and substantial; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that owing to the lack of employee information concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made with respect to the operation and administration of such plans.

(b) It is declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee welfare and pension benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto.

(Pub. L. 85-836, § 2, Aug. 28, 1958, 72 Stat. 997.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding this section.

EFFECTIVE DATE

Section 18, formerly § 12, of Pub. L. 85-836, renumbered by Pub. L. 87-420, § 16(a), Mar. 20, 1962, 76 Stat. 38, provided that: "The provisions of this Act [enacting this chapter and provisions set out as notes below] shall become effective January 1, 1959."

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87-420, § 1, Mar. 20, 1962, 76 Stat. 35, provided that: "This Act [which enacted sections 308a to 308f of this title and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, amended sections 302 to 309 of this title, renumbered section 309 of this title and provisions set out as notes under section 301 of this title, and enacted provisions set out as a note under section 302 of this title] may be cited as the 'Welfare and Pension Plans Disclosure Act Amendments of 1962'".

SHORT TITLE

Section 1 of Pub. L. 85-836 provided that: "This Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Welfare and Pension Plans Disclosure Act'".

SEPARABILITY OF PROVISIONS

Section 17, formerly § 11, of Pub. L. 85-836, renumbered by Pub. L. 87-420, § 16(a), Mar. 20, 1962, 76 Stat. 38, provided that: "If any provision of this Act [enacting this chapter and notes set out under this section] or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected."

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18.

Theft or embezzlement from employee benefit plan, see section 664 of Title 18.

§ 302. Definitions

(a) When used in this chapter—

(1) The term "employee welfare benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established by any employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment.

(2) The term "employee pension benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing or to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.

(3) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee welfare or pension benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee welfare or pension benefit plan, and

includes a group or association of employers acting for an employer in such capacity.

(5) The term "employee" means any individual employed by an employer.

(6) The term "participant" means any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee welfare or pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit.

(7) The term "beneficiary" means a person designated by a participant or by the terms of an employee welfare or pension benefit plan who is or may become entitled to a benefit thereunder.

(8) The term "person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

(9) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(10) The term "commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place outside thereof.

(11) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended [29 U.S.C. 141 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.].

(12) The term "Secretary" means the Secretary of Labor.

(13) The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee welfare benefit plan or employee pension benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or officer or employee or agent of such employer, or an officer or agent or employee of an employee organization having members covered by such plan.

(Pub. L. 85-836, § 3, Aug. 28, 1958, 72 Stat. 997; Pub. L. 86-624, § 21(d), July 12, 1960, 74 Stat. 417; Pub. L. 87-420, §§ 2-5, Mar. 20, 1962, 76 Stat. 35.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in par. (9), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables volume.

The Labor Management Relations Act, 1947, as amended, referred to in par. (11), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§ 141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables volume.

The Railway Labor Act, as amended, referred to in par. (11), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

CODIFICATION

Section was enacted without a subsec. (b).

AMENDMENTS

1962—Pub. L. 87-420 substituted "communicated or its benefits" for "communicated to or its benefits" in par. (1), included American Samoa, Guam, Wake Island and the Outer Continental Shelf lands in par. (9), substituted the definition of "industry or activity affecting commerce" for provisions which defined "affecting commerce" as meaning in commerce, or burdening or obstructing commerce or the free flow of commerce, in par. (11), and added pars. (12) and (13).

1960—Subsec. (a)(9). Pub. L. 86-624 eliminated "Hawaii," preceding "Puerto Rico".

EFFECTIVE DATE OF 1962 AMENDMENT

Section 19 of Pub. L. 87-420 provided that: "The amendments made by this Act [enacting sections 308a to 308f of this title and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, amending sections 302 to 309 of this title, renumbering section 309 of this title and provisions set out as notes under section 301 of this title, and enacting provisions set out as a note under section 302 of this title] shall take effect ninety days after the enactment of this Act [Mar. 20, 1962], except that section 13 of the Welfare and Pension Plans Disclosure Act [section 308d of this title] shall take effect one hundred eighty days after such date of enactment [Mar. 20, 1962]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 304 of this title.

§ 303. Plans within chapter

(a) Except as provided in subsection (b), of this section, this chapter shall apply to any employee welfare or pension benefit plan if it is established or maintained by any employer or employers engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce or by both.

(b) This chapter shall not apply to an employee welfare or pension benefit plan if—

(1) such plan is administered by the Federal Government or by the government of a State, by a political subdivision of a State, or by an agency or instrumentality of any of the foregoing;

(2) such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws;

(3) such plan is administered by an organization which is exempt from taxation under the provisions of section 501(a) of title 26 and is administered as a corollary to membership

in a fraternal benefit society described in section 501(c)(8) of title 26 or by organizations described in sections 501(c)(3) and 501(c)(4) of title 26: *Provided*, That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining; or

(4) such plan covers not more than twenty-five participants.

(Pub. L. 85–836, § 4, Aug. 28, 1958, 72 Stat. 998; Pub. L. 87–420, § 6, Mar. 20, 1962, 76 Stat. 35.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93–406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–420 substituted, in par. (3), "such plan is administered by an organization which is exempt" for "such plan is exempt" and inserted proviso stating that such paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining, and in par. (4) substituted "participants" for "employees".

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 305 of this title.

§ 304. Administrator

(a) Duty to publish description of plan and annual financial report

The administrator of an employee welfare benefit plan or an employee pension benefit plan shall publish in accordance with section 307 of this title to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain the information required by sections 305 and 306 of this title in such form and detail as the Secretary shall by regulations prescribe and copies thereof shall be executed, published, and filed in accordance with the provisions of this chapter and the Secretary's regulations thereunder. No regulation shall be issued under the preceding sentence which relieves any administrator of the obligation to include in such description or report any information relative to his plan which is required by section 305 or 306 of this title. Notwithstanding the foregoing, if the Secretary finds, on the record after giving interested persons an opportunity to be heard, that specific information on plans of certain kinds or on any class or classes of benefits described in section 302(1) and (2) of this title which are provided by such plans cannot, in the normal method of operation of such plans, be practicably ascertained or made available for publication in the manner or for the period prescribed in any provision of this chapter, or that the information if published in such manner or for such period would be duplicative or uninformative, the Secretary may by regulations prescribe such other manner or such other period for the publication of such information as he may determine to be necessary and appropriate to carry out the purposes of this chapter.

(b) Definition of "administrator"

The term "administrator" whenever used in this chapter, refers to—

(1) the person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed; or

(2) in the absence of such designation, the person or persons actually reponsible for the control, disposition, or management of the money received or contributed, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.

(Pub. L. 85–836, § 5, Aug. 28, 1958, 72 Stat. 998; Pub. L. 87–420, § 7, Mar. 20, 1962, 76 Stat. 36.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93–406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–420 empowered the Secretary to prescribe the form and detail in which the information shall be reported, provided for filing copies of the report, prohibited issuance of a regulation which relieves any administrator of the obligation to include in the description or report any information relative to his plan which is required by section 305 or 306 of this title, and authorized the Secretary to prescribe the manner or period for the publication of information in cases where specific information on plans of certain kinds or on any class or classes of benefits described in section 302(1) and (2) of this title which are provided by such plans cannot, in the normal method of operation of such plans, be practicably ascertained or made available in the manner or for the period prescribed, or that the information if published would be duplicative or uninformative.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18.

Theft or embezzlement from employee benefit plan, see section 664 of Title 18.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 305 of this title.

§ 305. Description of plan

(a) Time for publication

Except as provided in section 303 of this title, the description of any employee welfare or pension benefit plan shall be published as required herein within ninety days of January 1, 1959, or

within ninety days after the establishment of such plan, whichever is later.

(b) Contents

The description of the plan shall be published, signed, and sworn to by the person or persons defined as the "administrator" in section 304 of this title, and shall include their names and addresses, their official positions with respect to the plan, and their relationship, if any, to the employer or to any employee organizations, and any other offices, positions, or employment held by them; the name, address, and description of the plan and the type of administration; the schedule of benefits; the names, titles, and addresses of any trustee or trustees (if such persons are different from those persons defined as the "administrator"); whether the plan is mentioned in a collective bargaining agreement; copies of the plan or of the bargaining agreement, trust agreement, contract, or other instrument, if any, under which the plan was established and is operated; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 306 of this title, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported to the Secretary within sixty days after the change has been effectuated.

(Pub. L. 85–836, § 6, Aug. 28, 1958, 72 Stat. 999; Pub. L. 87–420, § 8, Mar. 20, 1962, 76 Stat. 36.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93–406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–420 required any change in the information to be reported to the Secretary within sixty days after the change has been effectuated.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 308 of this title.

§ 306. Annual reports

(a) Time for publication

The administrator of any employee welfare or pension benefit plan, a description of which is required to be published under section 305 of this title, shall also publish an annual report with respect to such plan if it covers one hundred or more participants. However, the Secretary, after investigation may require the administrator of any plan otherwise covered by the chapter to publish such report when necessary and appropriate to carry out the purposes of the chapter. Such report shall be published as required under section 307 of this title, within one hundred and fifty days after the end of the calendar year (or, if the records of the plan are kept on a policy or other fiscal year basis, within one hundred and fifty days after the end of such policy or fiscal year).

(b) Contents

A report under this section shall be signed by the administrator and such report shall include the following:

The amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets specifying the total amount in each of the following types of assets: cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets; a statement of liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes. The Secretary, when he has determined that an investigation is necessary in accordance with section 308(d) of this title, may require the filing of supporting schedules of assets and liabilities. The information required by this section shall be sworn to by the administrator, or certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to examination by any agency of the Federal Government or the government of any State. In the case of reports sworn to, but not certified, the Secretary, when he determines that it may be necessary to investigate the plan in accordance with section 303(d) of this title, shall, prior to investigation by the Department of Labor, require certification of the report by an independent certified or licensed public accountant.

(c) Unfunded plans

If the plan is unfunded, the report shall include only the total benefits paid and the average number of employees eligible for participation, during the past five years, broken down by years; and a statement, if applicable, that the only assets from which claims against the plan may be paid are the general assets of the employer.

(d) Additional information required where benefits are provided by insurance carrier or other service or organization

If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization such report shall include with respect to such plan (in addition to the information required by subsection (b) of this section) the following:

(1) The premium rate or subscription charge and the total premium or subscription charges paid to each such carrier or organization and the approximate number of persons covered by each class of such benefits.

(2) The total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carrier or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs, paid by such carrier or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose: *Provided*, That if any such carrier or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the carrier or other organization and (B), if such carrier or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

(e) Holding or investing of funds

Details relative to the manner in which any funds held by an employee welfare benefit plan are held or invested shall be reported as provided under paragraphs (B), (C), and (D) of subsection (f)(1) of this section.

(f) Plans funded through trust; plans funded through contract with insurance carrier; unfunded plans

Reports on employee pension benefit plans shall include, in addition to the applicable information required by the foregoing provisions of this section, the following:

(1) If the plan is funded through the medium of a trust, the report shall include—

(A) the type and basis of funding, actuarial assumptions used, the amount of current and past service liabilities, and the number of employees, both retired and nonretired covered by the plan;

(B) a statement showing the assets of the fund as required by section 306(b) of this title. Such assets shall be valued on the basis regularly used in valuing investments held in the fund and reported to the United States Treasury Department, or shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the United States Treasury Department;

(C) a detailed list, including information as to cost, present value, and percentage of total funds, of all investments in securities or properties of the employer or employee organization, or any other party in interest, but the identity of all securities and the detail of brokerage fees and commissions incidental to the purchase or sale of such securities need not be revealed if such securities are listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or securities in an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], or securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.], and the statement of assets contains a statement of the total investments in common stock, preferred stock, bonds and debentures, respectively, valued as provided in subparagraph (B).

(D) a detailed list of all loans made to the employer, employee organization, or other party in interest, including the terms and conditions of the loan and the name and address of the borrower: *Provided*, That if the plan is funded through the medium of a trust invested, in whole or in part, in one or more insurance or annuity contracts with an insurance carrier, the report shall include, as to the portion of the funds so invested, only the information required by paragraph (2) below.

(2) If the plan is funded through the medium of a contract with an insurance carrier, the report shall include—

(A) the type and basis of funding, actuarial assumptions used in determining the payments under the contract, and the number of employees, both retired and nonretired, covered by the contract; and

(B) except for benefits completely guaranteed by the carrier, the amount of current and past service liabilities, based on those assumptions, and the amount of all reserves accumulated under the plan.

(3) If the plan is unfunded, the report shall include the total benefits paid to retired employees for the past five years, broken down by year.

(g) Certification of information by insurance carrier or service or other organization

If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this chapter.

(h) Simplified reports

The Secretary shall prescribe by general rule simplified reports for plans which he finds that by virtue of their size or otherwise a detailed report would be unduly burdensome, but the Secretary may revoke such provisions for sim-

plified forms for any plan if the purposes of the chapter would be served thereby.

(Pub. L. 85-836, § 7, Aug. 28, 1958, 72 Stat. 1000; Pub. L. 87-420, §§ 9-13, Mar. 20, 1962, 76 Stat. 36, 37.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (f)(1)(C), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified principally to subchapter I (§ 80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in subsec. (f)(1)(C), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, as amended, which is classified generally to chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 79 of Title 15 and tables volume.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-420, § 9(a), limited the requirement of publishing the annual report to those plans which cover one hundred or more participants, empowered the Secretary to require the administrator of any plan to publish such report when necessary and appropriate to carry out the purposes of this chapter, and substituted "one hundred and fifty" for "one hundred and twenty" in two instances.

Subsec. (b). Pub. L. 87-420, § 9(b), (c), required the statement of assets to show the total amount of cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets, authorized the Secretary to require the filing of supporting schedules of assets and liabilities, and empowered the Secretary if he determines that it may be necessary to investigate the plan to require the certification of the report by an independent certified or licensed public accountant.

Subsec. (f)(1)(B). Pub. L. 87-420, § 10, substituted "a statement showing the assets of the fund as required by section 306(b) of this title" for "a summary statement showing the assets of the fund broken down by types, such as cash investments in governmental obligations, investments in nongovernmental bonds, and investments in corporate stocks".

Subsec. (f)(1)(C). Pub. L. 87-420, § 11, substituted "total funds" for "total fund" and "valued as provided in subparagraph (B)" for "listed at their aggregate cost or present value, whichever is lower", and eliminated words "by reason of being an officer, trustee, or employee of such fund" which followed "other party in interest".

Subsec. (f)(1)(D). Pub. L. 87-420, § 12, eliminated words "by reason of being an officer, trustee, or employee of such fund" which followed "other party in interest".

Subsecs. (g), (h). Pub. L. 87-420, § 13, added subsecs. (g) and (h).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 305, 308 of this title.

§ 307. Publication of description of plan and annual report

(a) Availability for examination in office of plan; delivery of copy of description of plan and summary of report

Publication of the description of the plan and the latest annual report required under this chapter shall be made to the participants and to the beneficiaries covered by the particular plan as follows:

(1) The administrator shall make copies of such descripton of the plan (including all amendments or modifications thereto upon their effective date) and of the latest annual report available for examination by any participant or beneficiary in the principal office of the plan.

(2) The administrator shall deliver upon written request to such participant or beneficiary a copy of the descripton of the plan (including all amendments or modifications thereto upon their effective date) and an adequate summary of the latest annual report, by mailing such documents to the last known address of the participant or beneficiary making such request.

(b) Filing of copies of plan and report with Secretary; availability for examination in Department of Labor

The administrator of any plan subject to the provisions of this chapter shall file with the Secretary two copies of the description of the plan and each annual report thereon. The Secretary shall make available for examination in the public document room of the Department of Labor copies of descriptions of plans and annual reports filed under this subsection.

(c) Preparation and availability of forms for description of plan and annual report

The Secretary shall prepare forms for the descriptions of plans and the annual reports required by the provisions of this chapter and shall make such forms available to the administrators of such plans on request.

(Pub. L. 85-836, § 8, Aug. 28, 1958, 72 Stat. 1002; Pub. L. 87-420, §§ 14, 18, Mar. 20, 1962, 76 Stat. 37, 43.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-420, § 14, substituted "an adequate summary" for "a summary" in par. (2).

Subsecs. (b), (c). Pub. L. 87-420, § 18, substituted "Secretary" for "Secretary of Labor", wherever appearing.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 308 of this title.

§ 308. Enforcement

(a) Penalty for violations

Any person who willfully violates any provision of this chapter shall be fined not more than $1,000, or imprisoned not more than six months, or both.

(b) Liability for failure or refusal to make publication

Any administrator of a plan who fails or refuses, upon the written request of a participant or beneficiary covered by such plan, to make publication to him within thirty days of such request, in accordance with the provisions of section 307 of this title, of a description of the plan or an annual report containing the information required by sections 305 and 306 of this title, may in the court's discretion become liable to any such participant or beneficiary making such request in the amount of $50 a day from the date of such failure or refusal.

(c) Actions to recover liability; jurisdiction; attorney fees and costs

Action to recover such liability may be maintained in any court of competent jurisdiction by any participant or beneficiary. The court in such action may in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(d) Investigations to disclose violations

The Secretary may, after first requiring certification in accordance with section 306(b) of this title, upon complaint of violation not satified by such certification, or on his own motion, when he continues to have reasonable cause to believe investigation may disclose violations of this chapter, make such investigations as he deems necessary, and may require or permit any person to file with him a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.

(e) Attendance of witnesses and production of books, records, and documents; applicability of other laws

For the purposes of any investigation provided for in this chapter, the provisions of sections 49 and 50 (relating to the attendance of witnesses and the production of books, records, and documents) of title 15 are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

(f) Injunctions

Whenever it shall appear to the Secretary that any person is engaged in any violation of the provisions of this chapter, he may in his discretion bring an action in the proper district court of the United States or United States court of any place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted.

(g) Jurisdiction to restrain violations

The United States district courts and the United States courts of any place subject to the jurisdiction of the United States shall have jurisdiction, for cause shown, to restrain violations of this chapter.

(h) Regulation or interference in management of plan; restriction on power of Secretary

Nothing contained in this chapter shall be so construed or applied as to authorize the Secretary to regulate, or interfere in the management of, any employee welfare or pension benefit plan, except that the Secretary may inquire into the existence and amount of investments, actuarial assumptions, or accounting practices only when it has been determined that investigation is required in accordance with section 308(d) of this title.

(i) Information to Attorney General

The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this chapter which may warrant consideration for criminal prosecution under the provisions of this chapter or other Federal law.

(Pub. L. 85-836, § 9, Aug. 28, 1958, 72 Stat. 1002; Pub. L. 87-420, § 15, Mar. 20, 1962, 76 Stat. 37.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-420, § 15(a), eliminated provisions which limited subsection to violations of section 304 or 307 of this title, and inserted provisions authorizing imposition of both fine and imprisonment.

Subsecs. (d) to (i). Pub. L. 87-420, § 15(b), added subsecs (d) to (i). Former subsec. (d), which related to jurisdiction to restrain violations, is now covered by subsec. (g) of this section. Former subsec. (e) made section 1001 of Title 18 applicable to any description of a plan or any annual report which is sworn to under this chapter. See section 1027 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18.

Theft or embezzlement from employee benefit plan, see section 664 of Title 18.

SECTION REFERRED TO IN OTHER SECTIONS.

This section is referred to in section 306 of this title.

§ 308a. Reports made public information

The contents of the descriptions and regular annual reports filed with the Secretary pursuant to this chapter shall be public information, and the Secretary, where to do so would protect the interests of participants or beneficiaries of a plan, may publish any such information and data. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(Pub. L. 85-836, § 10, as added Pub. L. 87-420, § 16(a), Mar. 20, 1962, 76 Stat. 38.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

§ 308b. Retention of records

Every person required to file any description or report or to certify any information therefor under this chapter shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

(Pub. L. 85-836, § 11, as added Pub. L. 87-420, § 16(a), Mar. 20, 1962, 76 Stat. 38.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

§ 308c. Reliance on administrative interpretations and forms

In any action or proceeding based on any act or omission in alleged violation of this chapter, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with any provision of this chapter if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Secretary, or (2) publish and file any information required by any provision of this chapter if he pleads and proves that he published and filed such information in good faith, on the description and annual report form prepared by the Secretary and in conformity with the instructions of the Secretary issued under this chapter regarding the filing of such forms. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this chapter.

(Pub. L. 85-836, § 12, as added Pub. L. 87-420, § 16(a), Mar. 20, 1962, 76 Stat. 38.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

§ 308d. Bonds

(a) Requirement; amount; conditions; sureties

Every administrator, officer, and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this chapter who handles funds or other property of such plan shall be bonded as herein provided; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers and employees of such plan shall be exempt from the bonding requirements of this section. The amount of such bond shall be fixed at the beginning of each calendar, policy, or other fiscal year, as the case may be, which constitutes the reporting year of such plan. Such amount shall be not less than 10 per centum of the amount of funds handled, determined as herein provided, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000: *Provided*, That the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by

reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 to 13 of title 6. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) Violations

It shall be unlawful for any administrator, officer, or employee to whom subsection (a) of this section applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee welfare benefit plan or employee pension benefit plan, without being bonded as required by subsection (a) of this section and it shall be unlawful for any administrator, officer, or employee of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) of this section have not been met.

(c) Procurement from surety or other company or through agent or broker in whose business operations such plan or party in interest has significant control or financial interest

It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any significant control or financial interest, direct or indirect.

(d) Bonding requirements in other provisions of law

Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) of this section because he handles funds or other property of an employee welfare benefit plan or of an employee pension benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) Regulations; exemption of plan

The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

(Pub. L. 85-836, § 13, as added Pub. L. 87-420, § 16(a), Mar. 20, 1962, 76 Stat. 39.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

EFFECTIVE DATE

Section effective 180 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 309 of this title.

§ 308e. Advisory Council

(a) Establishment; appointment of members

There is established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the "Council") which shall consist of thirteen members to be appointed in the following manner: One from the insurance field, one from the corporate trust field, two from management, four from labor, and two from other interested groups, all appointed by the Secretary from among persons recommended by organizations in the respective groups; and three representatives of the general public appointed by the Secretary.

(b) Duties; meetings; report to Congress

It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this chapter, and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least twice each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the chapter for such preceding calendar year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and the chapter's operation and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

(c) Executive secretary; secretarial, clerical and other services; statistical data, reports, and other information from governmental agencies

The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d) Compensation of members

Appointed members of the Council shall be paid compensation at the rate of $50 per diem when engaged in the work of the Council, including travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (section 5703 of title 5) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

(e) Exemption of members from provisions of other laws

(1) Any member of the Council is exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of title 18

and section 207 of title 18, except as otherwise specified in paragraph (2) of this subsection

(2) The exemption granted by paragraph (1) of this subsection shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

(Pub. L. 85-836, § 14, as added Pub. L. 87-420, § 16(a), Mar. 20, 1962, 76 Stat. 40.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

REFERENCES IN TEXT

Sections 281, 283, and 1914 of title 18, referred to in subsec. (e)(1), were repealed by Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126.

CODIFICATION

In subsec. (d), "section 5703 of title 5" was substituted for "section 73b-2 of title 5" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

In subsec. (e)(1), "section 207 of title 18" was substituted for "section 190 of the Revised Statutes (5 U.S.C. 99)" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory Councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a Council established by the President or an officer of the Federal Government, such Council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a Council established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in Appendix to Title 5, Government Organization and Employees.

§ 308f. Administration

(a) Applicability of other law

The provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall be applicable to this chapter.

(b) Prohibition on administration or enforcement by employee with respect to organization in which he has an interest

No employee of the Department of Labor shall administer or enforce this chapter with respect to any employee organization of which he is a member or employer organization in which he has an interest.

(c) Limitation on number of employees

No more than 260 employees shall be employed by the Department of Labor to administer or enforce this chapter for the first two years after March 20, 1962.

(d) Authorization of appropriations

Not more than two million two hundred thousand dollars per year is authorized to be appropriated for the administration and enforcement of this chapter, for the first two years after March 20, 1962.

(Pub. L. 85-836, § 15, as added Pub. L. 87-420, § 16(a), Mar. 20, 1962, 76 Stat. 41.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, Jan. 1, 1975, see note preceding section 301 of this title.

CODIFICATION

In subsec. (a), "subchapter II of chapter 5, and chapter 7, of title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

CROSS REFERENCES

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18, Crimes and Criminal Procedure.

§ 309. Effect of other laws

(a) State laws

In the case of an employee welfare or pension benefit plan providing benefits to employees employed in two or more States, no person shall be required by reason of any law of any such State to file with any State agency (other than an agency of the State in which such plan has its principal office) any information included within a description of the plan or an annual report published and filed pursuant to the provisions of this chapter if copies of such description of the plan and of such annual report are filed with the State agency, and if copies of such portion of the description of the plan and annual report, as may be required by the State agency, are distributed to participants and beneficiaries in accordance with the requirements of such State law with respect to scope of distribution. Nothing contained in this subsection shall be construed to prevent any State from obtaining such additional information relating to any such plan as it may desire, or from otherwise regulating such plan.

(b) Present or future Federal or State laws

The provisions of this chapter, except subsection (a) of this section and section 308d of this title, and any action taken thereunder, shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the

United States or of any State affecting the operation or administration of employee welfare or pension benefit plans, or in any manner to authorize the operation or administration of any such plan contrary to any such law.

(Pub. L. 85-836, § 16, formerly § 10, Aug. 28, 1958, 72 Stat. 1002, renumbered and amended Pub. L. 87-420, § 16(a), (b), Mar. 20, 1962, 76 Stat. 38, 41.)

REPEAL OF SECTION

For repeal of section by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851, eff. Jan. 1, 1975, see note preceding section 301 of this title.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-420, § 16(b), excepted section 308d of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date of 1962 Amendment note under section 302 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18.

Theft or embezzlement from employees benefit plan, see section 664 of Title 18.

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 186, 1111 of this title; title 39 section 1209; title 42 section 2000e.

SUBCHAPTER I—GENERAL PROVISIONS

§ 401. Congressional declaration of findings, purposes, and policy

(a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this chapter is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended [29 U.S.C. 141 et seq.], and the Railway Labor Act, as amended [45 U.S.C. 151 et seq.], and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

(Pub. L. 86-257, § 2, Sept. 14, 1959, 73 Stat. 519.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 86-257 which added this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables volume.

The Labor Management Relations Act, 1947, referred to in subsec. (c), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§ 141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables volume.

The Railway Labor Act, referred to in subsec. (c), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

SHORT TITLE

Section 1 of Pub. L. 86-257 provided that Pub. L. 86-257, which added this chapter and amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title, may be cited as the "Labor-Management Reporting and Disclosure Act of 1959."

§ 402. Definitions

For the purposes of this chapter—

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended [29 U.S.C. 141 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.].

(d) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this chapter.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) "Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.]; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding

paragraphs of this subsection, other than a State or local central body.

(k) "Secret ballot" means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

(l) "Trust in which a labor organization is interested" means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(o) "Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

(p) "Secretary" means the Secretary of Labor.

(q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried nonsupervisory professional staff, stenographic, and service personnel.

(r) "District court of the United States" means a United States district court and a United States court of any place subject to the jurisdiction of the United States.

(Pub. L. 86-257, § 3, Sept. 14, 1959, 73 Stat. 520.)

REFERENCES IN TEXT

"This chapter" referred to in the opening phrase, was in original "titles I, II, III, IV, V (except section 505), and VI of this Act", which reference includes those sections of the Act which are classified principally to this chapter. For complete classification of such titles to the Code, see Tables volume.

"This chapter", referred to in par. (f), was in the original "this Act", meaning Pub. L. 86-257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

The Outer Continental Shelf Lands Act, referred to in par. (b), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables volume.

The Labor Management Relations Act, 1947, referred to in par. (c), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§ 141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables volume.

The Railway Labor Act, referred to in pars. (c) and (j)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

The National Labor Relations Act, referred to in par. (j)(1), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 167 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 1209.

SUBCHAPTER II—BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

§ 411. Bill of rights; constitution and bylaws of labor organizations

(a)(1) Equal rights

Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, initiation fees, and assessments

Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general

or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) Protection of the right to sue

No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) Safeguards against improper disciplinary action

No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Invalidity of constitution and bylaws

Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

(Pub. L. 86–257, title I, § 101, Sept. 14, 1959, 73 Stat. 522.)

§ 412. Civil action for infringement of rights; jurisdiction

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

(Pub. L. 86–257, title I, § 102, Sept. 14, 1959, 73 Stat. 523.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 529 of this title.

§ 413. Retention of existing rights of members

Nothing contained in this subchapter shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.

(Pub. L. 86–257, title I, § 103, Sept. 14, 1959, 73 Stat. 523.)

§ 414. Right to copies of collective bargaining agreements

It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each collective bargaining agreement made by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement. The provisions of section 440 of this title shall be applicable in the enforcement of this section.

(Pub. L. 86–257, title I, § 104, Sept. 14, 1959, 73 Stat. 523.)

§ 415. Information to members of provisions of chapter

Every labor organization shall inform its members concerning the provisions of this chapter.

(Pub. L. 86–257, title I, § 105, Sept. 14, 1959, 73 Stat. 523.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86–257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

SUBCHAPTER III—REPORTING BY LABOR ORGANIZATIONS, OFFICERS AND EMPLOYEES OF LABOR ORGANIZATIONS, AND EMPLOYERS

§ 431. Report of labor organizations

(a) Adoption and filing of constitution and bylaws; contents of report

Every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with the Secretary, together with a report, signed by its president and secretary or corresponding principal officers, containing the following information—

(1) the name of the labor organization, its mailing address, and any other address at which it maintains its principal office or at which it keeps the records referred to in this subchapter;

(2) the name and title of each of its officers;

(3) the initiation fee or fees required from a new or transferred member and fees for work permits required by the reporting labor organization;

(4) the regular dues or fees or other periodic payments required to remain a member of the reporting labor organization; and

(5) detailed statements, or references to specific provisions of documents filed under this subsection which contain such statements, showing the provision made and procedures followed with respect to each of the following: (A) qualifications for or restrictions on membership, (B) levying of assessments, (C) participation in insurance or other benefit plans, (D) authorization for disbursement of funds of the labor organization, (E) audit of financial transactions of the labor organization, (F) the calling of regular and special meetings, (G) the selection of officers and stewards and of any representatives to other bodies composed of labor organizations' representatives, with a specific statement of the manner in which each officer was elected, appointed, or otherwise selected, (H) discipline or removal of officers or agents for breaches of their trust, (I) imposition of fines, suspensions, and expulsions of members, including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures, (J) authorization for bargaining demands, (K) ratification of contract terms, (L) authorization for strikes, and (M) issuance of work permits. Any change in the information required by this subsection shall be reported to the Secretary at the time the reporting labor organization files with the Secretary the annual financial report required by subsection (b) of this section.

(b) Annual financial report; filing; contents

Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year—

(1) assets and liabilities at the beginning and end of the fiscal year;

(2) receipts of any kind and the sources thereof;

(3) salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;

(4) direct and indirect loans made to any officer, employee, or member, which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment;

(5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(6) other disbursements made by it including the purposes thereof;

all in such categories as the Secretary may prescribe.

(c) Availability of information to members; examination of books, records, and accounts

Every labor organization required to submit a report under this subchapter shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(Pub. L. 86–257, title II, § 201(a)–(c), Sept. 14, 1959, 73 Stat. 524.)

Codification

Section is comprised of subsecs. (a) to (c) of section 201 of Pub. L. 86–257. Subsec. (d) of section 201 repealed subsecs. (f) to (h) of section 159 of this title, and subsec. (e) of section 201 amended section 158(a)(3)(i) of this title.

Section Referred to in Other Sections

This section is referred to in sections 435, 437, 439, 461 of this title.

§ 432. Report of officers and employees of labor organizations

(a) Filing; contents of report

Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year—

(1) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with

monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;

(2) any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(3) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(4) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;

(5) any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and

(6) any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in section 186(c) of this title.

(b) Report of certain bona fide investments

The provisions of paragraphs (1), (2), (3), (4), and (5) of subsection (a) of this section shall not be construed to require any such officer or employee to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], in shares in an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.], or to report any income derived therefrom.

(c) Exemption from filing requirement

Nothing contained in this section shall be construed to require any officer or employee of a labor organization to file a report under subsection (a) of this section unless he or his spouse or minor child holds or has held an interest, has received income or any other benefit with monetary value or a loan, or has engaged in a transaction described therein.

(Pub. L. 86-257, title II, § 202, Sept. 14, 1959, 73 Stat. 525.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables volume.

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified principally to subchapter I (§ 80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in subsec. (b), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, as amended, which is classified generally to chapter 20 (§ 79 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 79 of Title 15 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 435, 437 of this title.

§ 433. Report of employers

(a) Filing and contents of report of payments, loans, promises, agreements, or arrangements

Every employer who in any fiscal year made—

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except (A) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and (B) payments of the kind referred to in section 186(c) of this title;

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such

employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4);

shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

(b) Persuasive activities relating to the right to organize and bargain collectively; supplying information of activities in connection with labor disputes; filing and contents of report of agreement or arrangement

Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Advisory or representative services exempt from filing requirements

Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

(d) Exemption from filing requirements generally

Nothing contained in this section shall be construed to require an employer to file a report under subsection (a) of this section unless he has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) of this section unless he was a party to an agreement or arrangement of the kind described therein.

(e) Services by and payments to regular officers, supervisors, and employees of employer

Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.

(f) Rights protected by section 158(c) of this title

Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 158(c) of this title.

(g) Definition

The term "interfere with, restrain, or coerce" as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 157 of this title, would, under section 158(a) of this title, constitute an unfair labor practice.

(Pub. L. 86-257, title II, § 203, Sept. 14, 1959, 73 Stat. 526.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 435, 437, 439 of this title.

§ 434. Exemption of attorney-client communications

Nothing contained in this chapter shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this chapter

any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

(Pub. L. 86-257, title II, § 204, Sept. 14, 1959, 73 Stat. 528.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86-257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 435. Reports and documents as public information

(a) Publication; statistical and research purposes

The contents of the reports and documents filed with the Secretary pursuant to sections 431, 432, 433, and 441 of this title shall be public information, and the Secretary may publish any information and data which he obtains pursuant to the provisions of this subchapter. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Inspection and examination of information and data

The Secretary shall by regulation make reasonable provision for the inspection and examination, on the request of any person, of the information and data contained in any report or other document filed with him pursuant to section 431, 432, 433, or 441 of this title.

(c) Copies of reports or documents; availability to State agencies

The Secretary shall by regulation provide for the furnishing by the Department of Labor of copies of reports or other documents filed with the Secretary pursuant to this subchapter, upon payment of a charge based upon the cost of the service. The Secretary shall make available without payment of a charge, or require any person to furnish, to such State agency as is designated by law or by the Governor of the State in which such person has his principal place of business or headquarters, upon request of the Governor of such State, copies of any reports and documents filed by such person with the Secretary pursuant to section 431, 432, 433, or 441 of this title, or of information and data contained therein. No person shall be required by reason of any law of any State to furnish to any officer or agency of such State any information included in a report filed by such person with the Secretary pursuant to the provisions of this subchapter, if a copy of such report, or of the portion thereof containing such information, is furnished to such officer or agency. All moneys received in payment of such charges fixed by the Secretary pursuant to this subsection shall be deposited in the general fund of the Treasury.

(Pub. L. 86-257, title II, § 205, Sept. 14, 1959, 73 Stat. 528; Pub. L. 89-216, § 2(a)-(c), Sept. 29, 1965, 79 Stat. 888.)

AMENDMENTS

1965—Pub. L. 89-216 added references to section 441 of this title, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 461 of this title.

§ 436. Retention of records

Every person required to file any report under this subchapter shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

(Pub. L. 86-257, title II, § 206, Sept. 14, 1959, 73 Stat. 529.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 461 of this title.

§ 437. Time for making reports

(a) Each labor organization shall file the initial report required under section 431(a) of this title within ninety days after the date on which it first becomes subject to this chapter.

(b) Each person required to file a report under section 431(b), 432, 433(a), the second sentence of 433(b), or section 441 of this title shall file such report within ninety days after the end of each of its fiscal years; except that where such person is subject to section 431(b), 432, 433(a), the second sentence of 433(b), or section 441 of this title, as the case may be, for only a portion of such a fiscal year (because September 14, 1959, occurs during such person's fiscal year or such person becomes subject to this chapter during its fiscal year or such person may consider that portion as the entire fiscal year in making such report.

(Pub. L. 86-257, title II, § 207, Sept. 14, 1959, 73 Stat. 529; Pub. L. 89-216, § 2(d), Sept. 29, 1965, 79 Stat. 888.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86-257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

AMENDMENTS

1965—Subsec. (b). Pub. L. 89-216 inserted the reference to section 441 of this title in two places.

§ 438. Rules and regulations; simplified reports

The Secretary shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this subchapter and such other reasonable rules and regulations (including rules prescribing reports concerning

trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements. In exercising his power under this section the Secretary shall prescribe by general rule simplified reports for labor organizations or employers for whom he finds that by virtue of their size a detailed report would be unduly burdensome, but the Secretary may revoke such provision for simplified forms of any labor organization or employer if he determines, after such investigation as he deems proper and due notice and opportunity for a hearing, that the purposes of this section would be served thereby.

(Pub. L. 86-257, title II, § 208, Sept. 14, 1959, 73 Stat. 529.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 461 of this title; title 39 section 1209.

§ 439. Violations and penalties

(a) Willful violations of provisions of subchapter

Any person who willfully violates this subchapter shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(b) False statements or representations of fact with knowledge of falsehood

Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report, or other information required under the provisions of this subchapter shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) False entry in or willfull concealment etc., of books and records

Any person who willfully makes a false entry in or willfully conceals, withholds, or destroys any books, records, reports, or statements required to be kept by any provision of this subchapter shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(d) Personal responsibility of individuals required to sign reports

Each individual required to sign reports under sections 431 and 433 of this title shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false.

(Pub. L. 86-257, title II, § 209, Sept. 14, 1959, 73 Stat. 529.)

§ 440. Civil action for enforcement by Secretary; jurisdiction

Whenever it shall appear that any person has violated or is about to violate any of the provisions of this subchapter, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate. Any such action may be brought in the district court of the United States where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

(Pub. L. 86-257, title II, § 210, Sept. 14, 1959, 73 Stat. 530.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 414, 461 of this title.

§ 441. Surety company reports; contents; waiver or modification of requirements respecting contents of reports

Each surety company which issues any bond required by this Act or the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] shall file annually with the Secretary, with respect to each fiscal year during which any such bond was in force, a report, in such form and detail as he may prescribe by regulation, filed by the president and treasurer or corresponding principal officers of the surety company, describing its bond experience under each such Act, including information as to the premiums received, total claims paid, amounts recovered by way of subrogation, administrative and legal expenses and such related data and information as the Secretary shall determine to be necessary in the public interest and to carry out the policy of the Act. Notwithstanding the foregoing, if the Secretary finds that any such specific information cannot be practicably ascertained or would be uninformative, the Secretary may modify or waive the requirement for such information.

(Pub. L. 86-257, title II, § 211, as added Pub. L. 89-216, § 3, Sept. 29, 1965, 79 Stat. 888, and amended Pub. L. 93-406, title I, § 111(a)(2)(D), Sept. 2, 1974, 88 Stat. 852.)

REFERENCES IN TEXT

"This Act" referred to in text, is Pub. L. 86-257, the Labor-Management Reporting and Disclosure Act of 1959, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 832. For complete classification of this Act to the Code, see Short Title note set our under section 1001 of this title and Tables volume.

AMENDMENTS

1974—Pub. L. 93-406 substituted "Employee Retirement Income Security Act of 1974" for "Welfare and Pension Plans Disclosure Act".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 435, 437, 1031 of this title.

SUBCHAPTER IV—TRUSTEESHIPS

§ 461. Reports

(a) Filing and contents; annual financial report

Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after September 14, 1959 or the imposition of any such trusteeship, and semiannually thereafter, a report, signed by its

president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the subordinate organization; (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the subordinate organization in the selection of delegates to represent such organization in regular or special conventions or other policy-determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization. The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 431(b) of this title signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization.

(b) Applicability of other laws

The provisions of sections 431(c), 435, 436, 438, and 440 of this title shall be applicable to reports filed under this subchapter.

(c) Penalty for violations

Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(d) False statements and entries; failure to disclose material facts; withholding, concealing or destroying documents, books, records, reports, or statements; penalty

Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any report required under the provisions of this section or willfully makes any false entry in or willfully withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such report is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(e) Personal liability

Each individual required to sign a report under this section shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

(Pub. L. 86–257, title III, § 301, Sept. 14, 1959, 73 Stat. 530.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 464 of this title.

§ 462. Purposes for establishment of trusteeship

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

(Pub. L. 86–257, title III, § 302, Sept. 14, 1959, 73 Stat. 531.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 464 of this title.

§ 463. Unlawful acts relating to labor organization under trusteeship

(a) During any period when a subordinate body of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate, or (2) to transfer to such organization any current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship: *Provided*, That nothing herein contained shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution thereof.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(Pub. L. 86–257, title III, § 303, Sept. 14, 1959, 73 Stat. 531.)

§ 464. Civil action for enforcement

(a) Complaint; investigation; commencement of action by Secretary, member or subordinate body of labor organization; jurisdiction

Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this subchapter (except section 461 of this title) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this subchapter (except section 461 of this title) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

(b) Venue

For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized

officers or agents are engaged in conducting the affairs of the trusteeship.

(c) Presumptions of validity or invalidity of trusteeship

In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 462 of this title. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

(Pub. L. 86-257, title III, § 304, Sept. 14, 1959, 73 Stat. 531.)

§ 465. Report to Congress

The Secretary shall submit to the Congress at the expiration of three years from September 14, 1959, a report upon the operation of this subchapter.

(Pub. L. 86-257, title III, § 305, Sept. 14, 1959, 73 Stat. 532.)

§ 466. Additional rights and remedies; exclusive jurisdiction of district court; res judicata

The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies at law or in equity: *Provided,* That upon the filing of a complaint by the Secretary the jurisdiction of the district court over such trusteeship shall be exclusive and the final judgment shall be res judicata.

(Pub. L. 86-257, title III, § 306, Sept. 14, 1959, 73 Stat. 532.)

SUBCHAPTER V—ELECTIONS

§ 481. Terms of office and election procedures

(a) Officers of national or international labor organizations; manner of election

Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Officers of local labor organizations; manner of election

Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Requests for distribution of campaign literature; civil action for enforcement; jurisdiction; inspection of membership lists; adequate safeguards to insure fair election

Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies; manner of election

Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

(e) Nomination of candidates; eligibility; notice of election; voting rights; counting and publication of results; preservation of ballots and records

In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member

thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

(f) Election of officers by convention of delegates; manner of conducting convention; preservation of records

When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this subchapter. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) Use of dues, assessments or similar levies, and funds of employer for promotion of candidacy of person

No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in any election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) Removal of officers guilty of serious misconduct

If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with subchapter II of chapter 5 of title 5 that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot, conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this subchapter.

(i) Rules and regulations for determining adequacy of removal procedures

The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h) of this section.

(Pub. L. 86-257, title IV, § 401, Sept. 14, 1959, 73 Stat. 532.)

CODIFICATION

In subsec. (h), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 404 of Pub. L. 86-257 provided that:

"The provisions of this title [this subchapter] shall become applicable—

"(1) ninety days after the date of enactment of this Act [Sept. 14, 1959] in the case of a labor organization whose constitution and bylaws can lawfully be modified or amended by action of its constitutional officers or governing body, or

"(2) where such modification can only be made by a constitutional convention of the labor organization, not later than the next constitutional convention of such labor organization after the date of enactment of this Act [Sept. 14, 1959], or one year after such date, whichever is sooner. If no such convention is held within such one-year period, the executive board or similar governing body empowered to act for such labor organization between conventions is empowered to make such interim constitutional changes as are necessary to carry out the provisions of this title [this subchapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 482 of this title.

§ 482. Enforcement

(a) Filing of complaint; presumption of validity of challenged election

A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) Investigation of complaint; commencement of civil action by Secretary; jurisdiction; preservation of assets

The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the in-

valid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) Declaration of void election; order for new election; certification of election to court; decree; certification of result of vote for removal of officers

If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) Review of orders; stay of order directing election

An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

(Pub. L. 86–257, title IV, § 402, Sept. 14, 1959, 73 Stat. 534.)

§ 483. Application of other laws; existing rights and remedies; exclusiveness of remedy for challenging election

No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.

(Pub. L. 86–257, title IV, § 403, Sept. 14, 1959, 73 Stat. 534.)

SUBCHAPTER VI—SAFEGUARDS FOR LABOR ORGANIZATIONS

§ 501. Fiduciary responsibility of officers of labor organizations

(a) Duties of officers; exculpatory provisions and resolutions void

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) Violation of duties; action by member after refusal or failure by labor organization to commence proceedings; jurisdiction; leave of court; counsel fees and expenses

When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

(c) Embezzlement of assets; penalty

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an

officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(Pub. L. 86-257, title V, § 501, Sept. 14, 1959, 73 Stat. 535.)

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of violations of subsec. (c) of this section dealing with restrictions on payments and loans to labor organizations, see section 2516 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 sections 1961, 2516.

§ 502. Bonding of officers and employees of labor organizations; amount, form, and placement of bonds; penalty for violation

(a) Every officer, agent, shop steward, or other representative or employee of any labor organization (other than a labor organization whose property and annual financial receipts do not exceed $5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others. The bond of each such person shall be fixed at the beginning of the organization's fiscal year and shall be in an amount not less than 10 per centum of the funds handled by him and his predecessor or predecessors, if any, during the preceding fiscal year, but in no case more than $500,000. If the labor organization or the trust in which a labor organization is interested does not have a preceding fiscal year, the amount of the bond shall be, in the case of a local labor organization, not less than $1,000, and in the case of any other labor organization or of a trust in which a labor organization is interested, not less than $10,000. Such bonds shall be individual or schedule in form, and shall have a corporate surety company as surety thereon. Any person who is not covered by such bonds shall not be permitted to receive, handle, disburse, or otherwise exercise custody or control of the funds or other property of a labor organization or of a trust in which a labor organization is interested. No such bond shall be placed through an agent or broker or with a surety company in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization has any direct or indirect interest. Such surety company shall be a corporate surety which holds a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6 to 13), as an acceptable surety on Federal bonds: *Provided*, That when in the opinion of the Secretary a labor organization has made other bonding arrangements which would provide the protection required by this section at comparable cost or less, he may exempt such labor organization from placing a bond through a surety company holding such grant of authority.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(Pub. L. 86-257, title V, § 502, Sept. 14, 1959, 73 Stat. 536; Pub. L. 89-216, § 1, Sept. 29, 1965, 79 Stat. 888.)

REFERENCES IN TEXT

The act of July 30, 1947, referred to in text, is act July 30, 1947, ch. 390, 61 Stat. 646, which enacted Title 6, Surety Bonds.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-216 substituted "to provide protection against loss by reason of act of fraud or dishonesty on his part directly or through connivance with others" for "for the faithful discharge of his duties" following "shall be bonded" in the first sentence and added the proviso allowing Secretary to permit other arrangements to provide the necessary protection.

§ 503. Financial transactions between labor organization and officers and employees

(a) Direct and indirect loans

No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000.

(b) Direct or indirect payment of fines

No labor organization or employer shall directly or indirectly pay the fine of any officer or employee convicted of any willful violation of this chapter.

(c) Penalty for violations

Any person who willfully violates this section shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

(Pub. L. 86-257, title V, § 503, Sept. 14, 1959, 73 Stat. 536.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 86-257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 504. Prohibition against certain persons holding office

(a) Membership in Communist Party; persons convicted of robbery, bribery, etc.

No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of subchapter III or IV of this chapter, or conspiracy to commit any such crimes, shall serve—

(1) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee

performing exclusively clerical or custodial duties) of any labor organization, or

(2) as a labor relations consultant to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee (other than as an employee performing exclusively clerical or custodial duties) of any group or association of employers dealing with any labor organization,

during or for five years after the termination of his membership in the Communist Party, or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this chapter. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No labor organization or officer thereof shall knowingly permit any person to assume or hold any office or paid position in violation of this subsection.

(b) Penalty for violations

Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) Definitions

For the purposes of this section, any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after September 14, 1959.

(Pub. L. 86–257, title V, § 504, Sept. 14, 1959, 73 Stat. 536.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 86–257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 481 of this title.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§ 521. Investigations by Secretary; applicability of other laws

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

(Pub. L. 86–257, title VI, § 601, Sept. 14, 1959, 73 Stat. 539.)

REFERENCES IN TEXT

The phrase "this chapter (except subchapter II of this chapter)" referred to in subsec. (a), was in the original "this Act (except title I or amendments made by this Act to other statutes)". "This chapter", referred to later in subsec. (a) and also in subsec. (b), was in the original "this Act". "This Act" is Pub. L. 86–257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 522. Extortionate picketing; penalty for violation

(a) It shall be unlawful to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except a bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(Pub. L. 86–257, title VI, § 602, Sept. 14, 1959, 73 Stat. 539.)

§ 523. Retention of rights under other Federal and State laws

(a) Except as explicitly provided to the contrary, nothing in this chapter shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary, nothing in this chapter shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State.

(b) Nothing contained in this chapter and section 186(a)–(c) of this title shall be construed to supersede or impair or otherwise affect the provisions of the Railway Labor Act, as amended [45 U.S.C. 151 et seq.], or any of the obligations, rights, benefits, privileges, or immunities

of any carrier, employee, organization, representative, or person subject thereto; nor shall anything contained in this chapter be construed to confer any rights, privileges, immunities, or defenses upon employers, or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.].

(Pub. L. 86-257, title VI, § 603, Sept. 14, 1959, 73 Stat. 540.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 86-257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

The phrase "this chapter and section 186(a)-(c) of this title", referred to in subsec. (b), was in original "titles I, II, III, IV, V, or VI of this Act". The phrase "this chapter" later appearing in subsec. (b), was in original "said titles (except section 505) of this Act". Original text reference, in both instances, includes those sections of the Act which are classified principally to this chapter. For complete classification of such titles to the Code, see Tables volume.

The Railway Labor Act, referred to in subsec. (b), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

The National Labor Relations Act, referred to in subsec. (b), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 167 of this title and Tables volume.

§ 524. Effect on State laws

Nothing in this chapter shall be construed to impair or diminish the authority of any State to enact and enforce general criminal laws with respect to robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, or assault which inflicts grievous bodily injury, or conspiracy to commit any of such crimes.

(Pub. L. 86-257, title VI, § 604, Sept. 14, 1959, 73 Stat. 540.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86-257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 525. Service of process

For the purposes of this chapter, service of summons, subpena, or other legal process of a court of the United States upon an officer or agent of a labor organization in his capacity as such shall constitute service upon the labor organization.

(Pub. L. 86-257, title VI, § 605, Sept. 14, 1959, 73 Stat. 540.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86-257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 526. Applicability of administrative procedure provisions

The provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall be applicable to the issuance, amendment, or rescission of any rules or regulations, or any adjudication authorized or required pursuant to the provisions of this chapter.

(Pub. L. 86-257, title VI, § 606, Sept. 14, 1959, 73 Stat. 540.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86-257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

CODIFICATION

"Subchapter II of chapter 5, and chapter 7, of title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

§ 527. Cooperation with other agencies and departments

In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this chapter and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this chapter. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this chapter as may be found to warrant consideration for criminal prosecution under the provisions of this chapter or other Federal law.

(Pub. L. 86-257, title VI, § 607, Sept. 14, 1959, 73 Stat. 540.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86-257 which enacted

this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 528. Criminal contempt

No person shall be punished for any criminal contempt allegedly committed outside the immediate presence of the court in connection with any civil action prosecuted by the Secretary or any other person in any court of the United States under the provisions of this chapter unless the facts constituting such criminal contempt are established by the verdict of the jury in a proceeding in the district court of the United States, which jury shall be chosen and empaneled in the manner prescribed by the law governing trial juries in criminal prosecutions in the district courts of the United States.

(Pub. L. 86–257, title VI, § 608, Sept. 14, 1959, 73 Stat. 541.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86–257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see Rule 42, Federal Rules of Criminal Procedure, Title 18, Appendix.

§ 529. Prohibition on certain discipline by labor organization

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

(Pub. L. 86–257, title VI, § 609, Sept. 14, 1959, 73 Stat. 541.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86–257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 530. Deprivation of rights by violence; penalty

It shall be unlawful for any person through the use of force or violence, or threat of the use of force or violence, to restrain, coerce, or intimidate, or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of this chapter. Any person who willfully violates this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(Pub. L. 86–257, title VI, § 610, Sept. 14, 1959, 73 Stat. 541.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86–257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 531. Separability of provisions

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 86–257, title VI, § 611, Sept. 14, 1959, 73 Stat. 541.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning Pub. L. 86–257 which enacted this chapter, amended sections 153, 158, 159, 160, 164, 186, and 187 of this title, and enacted provisions set out as notes under sections 153, 158, and 481 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

CHAPTER 12—DEPARTMENT OF LABOR

Sec.
551. Establishment of Department; Secretary; seal.
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§ 551. Establishment of Department; Secretary; seal

There shall be an executive department in the Government to be called the Department of Labor, with a Secretary of Labor, who shall be the head thereof, to be appointed by the President, by and with the advice and consent of the Senate, and whose tenure of office shall be like that of the heads of the other executive departments. The provisions of title 4 of the Revised Statutes, including all amendments thereto, shall be applicable to said department. The purpose of the Department of Labor shall be to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment. The said Secretary shall cause a seal of office to be made for the said department of such device as

the President shall approve and judicial notice shall be taken of the said seal.

(Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Mar. 4, 1925, ch. 549, § 4, 43 Stat. 1301.)

REFERENCES IN TEXT

Title 4 of the Revised Statutes, referred to in text, consisted of sections 158 to 198 of the Revised Statutes. For complete classification of R.S. §§ 158 to 198 to the Code, see Tables volume.

CODIFICATION

Section was formerly classified to section 611 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

HISTORY OF DEPARTMENT

A Department of Labor under the charge of a Commissioner of Labor was first established by act June 13, 1888, ch. 389, 25 Stat. 182. That Department was placed under the jurisdiction and made a part of a new department, called the Department of Commerce and Labor, by act Feb. 14, 1903, ch. 552, § 4, 32 Stat. 827. The name Department of Labor was changed to Bureau of Labor by act Mar. 18, 1904, ch. 716, 33 Stat. 136. The present Department of Labor was created by act Mar. 4, 1913. The Bureau of Labor in the Department of Commerce and Labor was transferred to the present Department of Labor by said act.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Labor, see Parts 1, 10, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2292 of Title 50, Appendix, War and National Defense.

ORDER OF SUCCESSION

For order of succession in case of absence, sickness, resignation, or death of Secretary and Under Secretary, see Ex. Ord. No. 10513, Jan. 19, 1954, 19 F.R. 369, set out as a note under section 3347 of Title 5, Government Organization and Employees.

COMPENSATION OF SECRETARY

Compensation of Secretary, see section 5312 of Title 5, Government Organization and Employees.

§ 552. Under Secretary; appointment; duties

There is established in the Department of Labor the office of Under Secretary of Labor, which shall be filled by appointment by the President, by and with the advice and consent of the Senate. The Under Secretary shall perform such duties as may be prescribed by the Secretary of Labor or required by law. The Under Secretary shall (1) in case of the death, resignation, or removal from office of the Secretary, perform the duties of the Secretary until a successor is appointed, and (2) in case of the absence or sickness of the Secretary, perform the duties of the Secretary until such absence or sickness shall terminate.

(Apr. 17, 1946, ch. 140, § 1, 60 Stat. 91.)

CODIFICATION

Provisions of this section which prescribed the basic annual compensation of the Under Secretary were omitted to conform to the provisions of the Executive Schedule. See section 5314 of Title 5, Government Organization and Employees.

Section was formerly classified to section 611a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

ORDER OF SUCCESSION

For order of succession in case of absence, sickness, resignation, or death of Secretary and Under Secretary, see Ex. Ord. No. 10513, Jan. 19, 1954, 19 F.R. 369 set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 553. Assistant Secretaries; appointment; duties

There are established in the Department of Labor five offices of Assistant Secretary of Labor, which shall be filled by appointment by the President, by and with the advice and consent of the Senate. Each of the Assistant Secretaries of Labor shall perform such duties as may be prescribed by the Secretary of Labor or required by law. One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health.

(Apr. 17, 1946, ch. 140, § 2, 60 Stat. 91; Aug. 11, 1961, Pub. L. 87-137, § 1, 75 Stat. 338; Dec. 29, 1970, Pub. L. 91-596, § 29(a), 84 Stat. 1618.)

CODIFICATION

Provisions of this section which prescribed the basic annual compensation of the Assistant Secretaries were omitted to conform to the provisions of the Executive Schedule. See section 5315 of Title 5, Government Organization and Employees.

Section was formerly classified to section 611b of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

AMENDMENTS

1970—Pub. L. 91-596 increased the number of Assistant Secretaries of Labor from four to five and added the provision that one of such Assistant Secretaries be an Assistant Secretary of Labor for Occupational Safety and Health.

1961—Pub. L. 87-137 increased the number of Assistant Secretaries of Labor from three to four.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-596 effective 120 days after Dec. 29, 1970 see section 34 of Pub. L. 91-596, set out as an Effective Date note under section 651 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

ADMINISTRATIVE ASSISTANT SECRETARY

Reorg. Plan No. 6 of 1950, § 3, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees, provided for an Administrative Assistant Secretary of Labor to be appointed, with the approval of the President, by the Secretary of Labor under the classified civil service, to perform such duties as the Secretary of Labor shall prescribe, and to receive compensation at rate of $14,000 per annum.

CROSS REFERENCES

Designation of officers to act as Secretary of Labor, see Ex. Ord. No. 10513, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 554. Assistants to Secretary

There shall be in the Department of Labor not more than two assistants to the Secretary, who shall be appointed by the President and shall perform such duties as may be prescribed by the Secretary of Labor or required by law.

(Mar. 4, 1927, ch. 498, 44 Stat. 1415.)

CODIFICATION

Section was formerly classified to section 613a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 555. Solicitor

There shall be a solicitor for the Department of Labor.

(Mar. 18, 1904, ch. 716, § 1, 33 Stat. 135; Mar. 4, 1913, ch. 141, § 7, 37 Stat. 738; Ex. Ord. No. 6166, § 7, June 10, 1933.)

CODIFICATION

The words "of the Department of Justice" were omitted from text on authority of Ex. Ord. No. 6166, which transferred the Solicitor for the Department of Labor from the Department of Justice to the Department of Labor.

Section was formerly classified to section 613b of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

COMPENSATION OF SOLICITOR

Compensation of solicitor, see section 5315 of Title 5, Government Organization and Employees.

CROSS REFERENCES

Solicitor to act as Secretary of Labor, see Ex. Ord. No. 10513, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 556. Chief clerk; other employees

There shall be in said department a chief clerk and such other clerical assistants, inspectors, and special agents as may from time to time be provided for by Congress.

(Mar. 4, 1913, ch. 141, § 2, 37 Stat. 736; Ex. Ord. No. 6166, § 4, June 10, 1933.)

CODIFICATION

The words "a disbursing clerk" were omitted from text on authority of Ex. Ord. No. 6166, which transferred all functions relating to the disbursement of moneys of the United States to the Treasury Department.

Section was formerly classified to section 615 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 557. Bureaus and offices in Department

The following-named offices, bureaus, divisions, and branches of the public service, and all that pertains to the same, shall be under the jurisdiction and supervision of the Department of Labor:

1. Bureau of Employees' Compensation.
2. Bureau of Labor Standards.
3. Bureau of Labor Statistics.
4. Division of Public Contracts.
5. Employees' Compensation Appeals Board.
6. United States Employment Service.
7. Wage and Hour Division.
8. Women's Bureau.

(Mar. 4, 1913, ch. 141, §§ 3, 8, 37 Stat. 737, 738; June 5, 1920, ch. 248, § 1, 41 Stat. 987; June 6, 1933, ch. 49, § 1, 48 Stat. 113; Ex. Ord. No. 6166, § 14, June 10, 1933; June 30, 1936, ch. 881, § 4, 49 Stat. 2038; June 25, 1938, ch. 676, § 4, 52 Stat. 1061; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1940 Reorg. Plan No. V, § 1, eff. June 4, 1940, 5 F.R. 2223, 54 Stat. 1238; Ex. Ord. No. 9247, Sept. 17, 1942, 7 F.R. 7379; Ex. Ord. No. 9617, Sept. 19, 1945, 10 F.R. 11929; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; June 23, 1947, ch. 120, title II, § 202, 61 Stat. 153; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; 1950 Reorg. Plan No. 19, §§ 1, 2, eff. May 24, 1952, 15 F.R. 3178, 64 Stat. 1271, 1272.)

CODIFICATION

Section was formerly classified to section 616 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

The Bureau of Employees' Compensation was transferred to the Department of Labor from the Federal

Security Agency by Reorg. Plan No. 19 of 1950, § 1, which was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 662, the subject matter of which is now covered by section 8101 et seq. of Title 5. Subsequently, the Bureau of Compensation was absorbed by the Employment Standards Administration in the Department of Labor.

The Bureau of Labor Standards was established in the Department of Labor by departmental order in 1934, and its functions were absorbed by the Occupational Safety and Health Administration in May, 1971.

The Division of Public Contracts was established in the Department of Labor by virtue of act June 30, 1936, and was consolidated with the Wage and Hour Division by order of the Secretary of Labor on Aug. 21, 1942. Subsequently, by order of the Secretary of Labor in May, 1971, the Division of Public Contracts was absorbed by the Wage and Hour Division.

The Employees' Compensation Appeals Board was transferred to the Department of Labor from the Federal Security Agency by Reorg. Plan No. 19 of 1950, § 2, which was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 662, the subject matter of which is now covered by section 8101 et seq. of Title 5, Government Organization and Employees.

The United States Employment Service was created in the Department of Labor by act June 6, 1933. It was transferred to the Federal Security Agency by Reorg. Plan No. I of 1939, and its functions were consolidated with the unemployment compensation functions of the Social Security Board in the Bureau of Employment Security. Ex. Ord. No. 9247, Sept. 17, 1942, transferred the United States Employment Service from the Social Security Board to the War Manpower Commission and became a part of the Bureau of Placement. The Service was transferred to the Department of Labor by Ex. Ord. No. 9617, Sept. 19, 1945, to be administered as an organizational entity. Act June 16, 1948, ch. 472, 62 Stat. 443, transferred the Service to the Federal Security Agency to function as a part of the Bureau of Employment Security in the Social Security Administration. Reorg. Plan No. 2 of 1949, eff. Aug. 20, 1949, transferred the Bureau of Employment Security, including the United States Employment Service, to the Department of Labor.

The Wage and Hour Division was established in the Department of Labor by act June 25, 1938, and was consolidated with the Division of Public Contracts by order of the Secretary of Labor on Aug. 21, 1942.

The Women's Bureau was established in the Department of Labor by act June 5, 1920.

The Bureau of Immigration and the Bureau of Naturalization, placed under the jurisdiction of the Department of Labor upon its creation by act Mar. 4, 1913, were consolidated as the Immigration and Naturalization Service by Ex. Ord. No. 6166, § 14. The Immigration and Naturalization Service of the Department of Labor, including the Office of the Commissioner of Immigration and Naturalization, was transferred to the Department of Justice by Reorg. Plan No. V of 1940, set out in the Appendix to Title 5, Government Organization and Employees.

The Children's Bureau was transferred from the Department of Labor to the Federal Security Agency by Reorg. Plan No. 2 of 1946, set out in the Appendix to title 5. For present status of the Children's Bureau, see note under section 191 of Title 42. The Public Health and Welfare.

The United States Conciliation Service was established in the Department of Labor by virtue of act Mar. 4, 1913, § 8, formerly set out as section 619 of former Title 5, Executive Departments and Government Officers and Employees, and section 51 of this title, but was discontinued in view of act June 23, 1947, § 202, and set out as section 172 of this title which transferred to the Federal Mediation and Conciliation Service, an independent agency, all powers and functions vested in the Secretary of Labor by act Mar. 4, 1913, § 8.

§ 558. Library, records, etc., of Department

The Secretary of Labor shall have charge in the buildings or premises occupied by or appropriated to the Department of Labor, of the library, furniture, fixtures, records, and other property pertaining to it or acquired for use in its business. He shall be allowed to expend for periodicals and the purposes of the library and for rental of appropriate quarters for the accommodation of the Department of Labor within the District of Columbia, and for all other incidental expenses, such sums as Congress may provide from time to time.

(Mar. 4, 1913, ch. 141, § 6, 37 Stat. 738.)

Codification

Section was formerly classified to section 617 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 559. Rented quarters

Where any office, bureau, or branch of the public service transferred to the Department of Labor by this Act is occupying rented buildings or premises, it may continue to do so until other suitable quarters are provided for its use.

(Mar. 4, 1913, ch. 141, § 6, 37 Stat. 738.)

References in Text

This Act, referred to in text, is act Mar. 4, 1913, ch. 141, 37 Stat. 736, which is classified principally to sections 2, 551, and 555 to 562 of this title. For complete classification of this Act to the Code, see Tables volume.

Codification

Section was formerly classified to section 618 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Cross Reference

Lease of buildings to Government, see section 278a of Title 40, Public Buildings, Property, and Works.

§ 560. Reports and investigations

The Secretary of Labor shall annually, at the close of each fiscal year, make a report in writing to Congress, giving an account of all moneys received and disbursed by him and his department and describing the work done by the department. He shall also, from time to time, make such special investigations and reports as he may be required to do by the President, or by Congress, or which he himself may deem necessary.

(Mar. 4, 1913, ch. 141, § 9, 37 Stat. 738.)

CODIFICATION

Section was formerly classified to section 620 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2048.

§ 561. Records and papers and furniture transferred to Department

The official records and papers on file in and pertaining exclusively to the business of any bureau, office, department, or branch of the public service in this Act transferred to the Department of Labor, together with the furniture in use in such bureau, office, department, or branch of the public service, are transferred to the Department of Labor.

(Mar. 4, 1913, ch. 141, § 5, 37 Stat. 737.)

REFERENCES IN TEXT

This Act, referred to in text, is act Mar. 4, 1913, ch. 141, 37 Stat. 736, which is classified principally to sections 2, 551, and 555 to 562 of this title. For complete classification of this Act to the Code, see Tables volume.

CODIFICATION

Section was formerly classified to section 621 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

§ 562. Laws operative

All laws prescribing the work and defining the duties of the several bureaus, offices, departments, or branches of the public service by this Act transferred to and made a part of the Department of Labor shall, so far as the same are not in conflict with the provisions of this Act, remain in full force and effect, to be executed under the direction of the Secretary of Labor.

(Mar. 4, 1913, ch. 141, § 6, 37 Stat. 738.)

REFERENCES IN TEXT

This Act, referred to in text, is act Mar. 4, 1913, ch. 141, 37 Stat. 736, which is classified principally to sections 2, 551, and 555 to 562 of this title. For complete classification of this Act to the Code, see Tables volume.

CODIFICATION

Section was formerly classified to section 622 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6, of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 563. Working capital fund; establishment; availability; capitalization; reimbursement

There is established a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of (1) a central reproduction service; (2) a central visual exhibit service; (3) a central supply service for supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department; (4) a central tabulating service; (5) telephone, mail and messenger services; (6) a central accounting and payroll service; and (7) a central laborers' service: *Provided*, That any stocks of supplies and equipment on hand or on order shall be used to capitalize such fund: *Provided further*, That such fund shall be reimbursed in advance from funds available to bureaus, offices, and agencies for which such centralized services are performed at rates which will return in full all expenses of operation, including reserves for accrued annual leave and depreciation of equipment.

(Pub. L. 85-67, title I, § 101, June 29, 1957, 71 Stat. 210; Pub. L. 86-703, title I, § 101, Sept. 2, 1960, 74 Stat. 755.)

CODIFICATION

Section was formerly classified to section 622a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

AMENDMENTS

1960—Pub. L. 86-703 made the fund available for the maintenance and operation of a central tabulating service, a central accounting and payroll service, and a central laborers' service.

§ 564. Working capital fund; availability for personnel functions in regional administrative offices

The Working Capital Fund of the Department of Labor shall be available on and after March 5, 1970, for expenses necessary for personnel functions in regional administrative offices.

(Pub. L. 91-204, title I, § 100, Mar. 5, 1970, 84 Stat. 26.)

CHAPTER 13—EXEMPLARY REHABILITATION CERTIFICATES

Sec.
601. Establishment of Exemplary Rehabilitation Certificates.
602. Issuance of certificates; showing of rehabilitation; military personnel records.
603. Supporting oral and written evidence.
604. Other benefits.
605. Special counseling and job development assistance.
606. Annual report to Congress.
607. Rules and regulations; delegation of authority.

§ 601. Establishment of Exemplary Rehabilitation Certificates

The Secretary of Labor shall act on any application for an Exemplary Rehabilitation Certificate received under this chapter from any person who was discharged or dismissed under conditions other than honorable, or who received a general discharge, at least three years before the date of receipt of such application.

(Pub. L. 90-83, § 6(a), Sept. 11, 1967, 81 Stat. 221.)

§ 602. Issuance of certificates; showing of rehabilitation; military personnel records

In the case of any person discharged or dismissed from an armed force under conditions other than honorable before or after the enactment of this chapter, the Secretary of Labor may consider an application for, and issue to that person, an Exemplary Rehabilitation Certificate dated as of the date of issuance, if it is established to his satisfaction that such person has rehabilitated himself, that his character is good, and that his conduct, activities, and habits since he was so discharged or dismissed have been exemplary for a reasonable period of time, but not less than three years. The Secretary of Labor shall supply to the Secretary of Defense a copy of each Exemplary Rehabilitation Certificate which is issued, and the Secretary of Defense shall place it in the military personnel record of the individual to whom the certificate is issued.

(Pub. L. 90–83, § 6(b), Sept. 11, 1967, 81 Stat. 221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 604 of this title.

§ 603. Supporting oral and written evidence

For the purposes of section 602 of this title, oral and written evidence, or both, may be used, including—

(1) a notarized statement from the chief law enforcement officer of the town, city, or county in which the applicant resides, attesting to his general reputation so far as police and court records are concerned;

(2) a notarized statement from his employer, if employed, giving the employer's address, and attesting to the applicant's general reputation and employment record;

(3) notarized statements from not less than five persons, attesting that they have personally known him for at least three years as a person of good reputation and exemplary conduct, and the extent of personal contact they have had with him; and

(4) such independent investigations as the Secretary of Labor may make.

Any person making application under this chapter may appear in person or by counsel before the Secretary of Labor.

(Pub. L. 90–83, § 6(c), Sept. 11, 1967, 81 Stat. 221.)

§ 604. Other benefits

No benefits under any laws of the United States (including but not limited to those relating to pensions, compensation, hospitalization, military pay and allowances, education, loan guarantees, retired pay, or other benefits based on military service) shall accrue to any person to whom an Exemplary Rehabilitation Certificate is issued under section 602 of this title unless he would be entitled to those benefits under his original discharge or dismissal.

(Pub. L. 90–83, § 6(d), Sept. 11, 1967, 81 Stat. 221.)

§ 605. Special counseling and job development assistance

The Secretary of Labor shall require that the national system of public employment offices established under chapter 4B of this title, accord to any person who has been discharged or dismissed under conditions other than honorable but who has been issued an Exemplary Rehabilitation Certificate special counseling and job development assistance.

(Pub. L. 90–83, § 6(e), Sept. 11, 1967, 81 Stat. 221.)

REFERENCES IN TEXT

Chapter 4B (§ 49 et seq.) of this title, referred to in text, was in the original a reference to Act June 6, 1933, as amended.

§ 606. Annual report to Congress

The Secretary of Labor shall report to Congress not later than January 15 of each year the number of cases reviewed by him under this chapter and the number of Exemplary Rehabilitation Certificates issued.

(Pub. L. 90–83, § 6(f), Sept. 11, 1967, 81 Stat. 221.)

§ 607. Rules and regulations; delegation of authority

In carrying out the provisions of this chapter the Secretary of Labor is authorized to (1) issue regulations; (2) delegate his authority; (3) utilize the services of the Civil Service Commission for making such investigations as may be mutually agreeable.

(Pub. L. 90–83, § 6(g), Sept. 11, 1967, 81 Stat. 221.)

CHAPTER 14—AGE DISCRIMINATION IN EMPLOYMENT

Sec.

621. Congressional statement of findings and purpose.
622. Education and research program; recommendation to Congress.
623. Prohibition of age discrimination.
(a) Employer practices.
(b) Employment agency practices.
(c) Labor organization practices.
(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation.
(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.
(f) Lawful practices; age an occupational qualification; other reasonable factors; seniority system; employee benefit plans; discharge or discipline for good cause.
624. Study by Secretary of Labor; reports to President and Congress.
625. Administration.
(a) Delegation of functions; appointment of personnel; technical assistance.
(b) Cooperation with other agencies, employers, labor organizations, and employment agencies.
626. Recordkeeping, investigation, and enforcement.
(a) Attendance of witnesses; investigations, inspections, records, and homework regulations.

Sec.
(b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion.
(c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Secretary.
(d) Notice to Secretary: timeliness; conciliation, conference, and persuasion.
(e) Statute of limitations; reliance in future on administrative rulings, etc.
627. Notices to be posted.
628. Rules and regulations; exemptions.
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632. Annual report to Congress.
633. Federal-State relationship.
(a) Federal action superseding State action.
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633a. Nondiscrimination on account of age in Federal Government employment.
(a) Federal agencies affected.
(b) Enforcement by Civil Service Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission: compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification.
(c) Civil actions; jurisdiction; relief.
(d) Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices.
(e) Duty of Government agency or official.
634. Authorization of appropriations.

CROSS REFERENCES

Age discrimination in federally assisted programs, see section 6101 et seq. of Title 42, The Public Health and Welfare.

Civil rights, Federally assisted programs, see section 2000d et seq. of Title 42.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 3012, 6103.

§ 621. Congressional statement of findings and purpose

(a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

(Pub. L. 90-202, § 2, Dec. 15, 1967, 81 Stat. 602.)

EFFECTIVE DATE; RULES AND REGULATIONS

Section 16, formerly 15 of Pub. L. 90-202, renumbered by Pub. L. 93-259, § 28(b)(1), Apr. 8, 1974, 88 Stat. 74, provided that: "This Act [this chapter] shall become effective one hundred and eighty days after enactment [Dec. 15, 1967], except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act [this chapter] up to and additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment [Dec. 15, 1967] the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions."

SHORT TITLE

Section 1 of Pub. L. 90-202 provided: "That this Act [which enacted this chapter] may be cited as the 'Age Discrimination in Employment Act of 1967'."

§ 622. Education and research program; recommendation to Congress

(a) The Secretary of Labor shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this chapter, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures—

(1) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

(b) Not later than six months after the effective date of this chapter, the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 631 of this title.

(Pub. L. 90-202, § 3, Dec. 15, 1967, 81 Stat. 602.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), means the effective date of Pub. L. 90-202, which is one hundred and eighty days after the enactment of this chapter, except that the Secretary of Labor may extend the delay in effective date an additional ninety days thereafter for any provision to permit adjustments to such provisions. See section 16 of Pub. L. 90-202, set out as a note under section 621 of this title.

§ 623. Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

(b) Employment agency practices

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) Labor organization practices

It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) Lawful practices; age an occupational qualification; other reasonable factors; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(3) to discharge or otherwise discipline an individual for good cause.

(Pub. L. 90-202, § 4, Dec. 15, 1967, 81 Stat. 603.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 626 of this title.

§ 624. Study by Secretary of Labor; reports to President and Congress

The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress.

(Pub. L. 90-202, § 5, Dec. 15, 1967, 81 Stat. 604.)

§ 625. Administration

The Secretary shall have the power—

(a) Delegation of functions; appointment of personnel; technical assistance

to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this chapter;

(b) Cooperation with other agencies, employers, labor organizations, and employment agencies

to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this chapter.

(Pub. L. 90-202, § 6, Dec. 15, 1967, 81 Stat. 604.)

§ 626. Recordkeeping, investigation, and enforcement

(a) Attendance of witnesses; investigations, inspections, records, and homework regulations

The Secretary shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this chapter in accordance with the powers and procedures provided in sections 209 and 211 of this title.

(b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion

The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title: *Provided,* That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Secretary shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion.

(c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Secretary

Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: *Provided,* That the right of any person to bring such action shall terminate upon the commencement of an action by the Secretary to enforce the right of such employee under this chapter.

(d) Notice to Secretary: timeliness; conciliation, conference, and persuasion

No civil action may be commenced by any individual under this section until the individual has given the Secretary not less than sixty days' notice of an intent to file such action. Such notice shall be filed—

(1) within one hundred and eighty days after the alleged unlawful practice occurred, or

(2) in a case to which section 633(b) of this title applies, within three hundred days after the alleged unlawful practice occurred or within thirty days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Upon receiving a notice of intent to sue, the Secretary shall promptly notify all persons named therein as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

(e) Statute of limitations; reliance in future on administrative rulings, etc.

Sections 255 and 259 of this title shall apply to actions under this chapter.

(Pub. L. 90-202, § 7, Dec. 15, 1967, 81 Stat. 604.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 633 of this title.

§ 627. Notices to be posted

Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Secretary setting forth information as the Secretary deems appropriate to effectuate the purposes of this chapter.

(Pub. L. 90-202, § 8, Dec. 15, 1967, 81 Stat. 605.)

§ 628. Rules and regulations; exemptions

In accordance with the provisions of subchapter II of chapter 5 of title 5, the Secretary of Labor may issue such rules and regulations as he may consider necessary or appropriate for carrying out this chapter, and may establish such reasonable exemptions to and from any or all provisions of this chapter as he may find necessary and proper in the public interest.

(Pub. L. 90-202, § 9, Dec. 15, 1967, 81 Stat. 605.)

§ 629. Criminal penalties

Whoever shall forcibly resist, oppose, impede, intimidate or interfere with a duly authorized representative of the Secretary while he is engaged in the performance of duties under this chapter shall be punished by a fine of not more than $500 or by imprisonment for not more than one year, or by both: *Provided, however,* That no person shall be imprisoned under this section except when there has been a prior conviction hereunder.

(Pub. L. 90-202, § 10, Dec. 15, 1967, 81 Stat. 605.)

§ 630. Definitions

For the purposes of this chapter—

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trust, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided,* That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United

States, or a corporation wholly owned by the Government of the United States.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is fifty or more prior to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.]; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by any employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.].

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(Pub. L. 90-202, § 11, Dec. 15, 1967, 81 Stat. 605; Pub. L. 93-259, § 28(a)(1)-(4), Apr. 8, 1974, 88 Stat. 74.)

REFERENCES IN TEXT

The National Labor Relations Act, referred to in subsec. (e)(1), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 167 of this title and Tables volume.

The Railway Labor Act, referred to in subsec. (e)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub. L. 86-257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title, and Tables volume.

The Outer Continental Shelf Lands Act, referred to in subsec. (i), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables volume.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93-259, § 28(a)(1), (2), substituted in first sentence "twenty" for "twenty-five" and, in second sentence, defined term "employer" to include a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, and deleted text excluding from such term a State or political subdivision thereof.

Subsec. (c). Pub. L. 93-259, § 28(a)(3), deleted text excluding from term "employment agency" an agency of a State or political subdivision of a State, but including the United States Employment Service and

the system of State and local employment services receiving Federal assistance.

Subsec. (f). Pub. L. 93-259, § 28(a)(4), excepted from the term "employee" elected public officials, persons chosen by such officials for such officials' personal staff, appointees on policymaking level, and immediate advisers with respect to exercise of constitutional or legal powers of the public office but excluded from such exemption employees subject to civil laws of a State government, governmental agency, or political subdivision.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

CROSS REFERENCES

Industry affecting commerce, see section 402 of this title.

Outer Continental Shelf, see section 1331 of Title 43, Public Lands.

§ 631. Age limits

The prohibitions in this chapter shall be limited to individuals who are at least forty years of age but less than sixty-five years of age.

(Pub. L. 90-202, § 12, Dec. 15, 1967, 81 Stat. 607.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 622 of this title.

§ 632. Annual report to Congress

The Secretary shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data and recommendations for further legislation in connection with the matters covered by this chapter as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the effect of the minimum and maximum ages established by this chapter, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the general age level of the population, the effect of the chapter upon workers not covered by its provisions, and such other factors as he may deem pertinent.

(Pub. L. 90-202, § 13, Dec. 15, 1967, 81 Stat. 607.)

§ 633. Federal-State relationship

(a) Federal action superseding State action

Nothing in this chapter shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this chapter such action shall supersede any State action.

(b) Limitation of Federal action upon commencement of State proceedings

In the case of an alleged unlawful practice occuring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

(Pub. L. 90-202, § 14, Dec. 15, 1967, 81 Stat. 607.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 626 of this title.

§ 633a. Nondiscrimination on account of age in Federal Government employment

(a) Federal agencies affected

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

(b) Enforcement by Civil Service Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission: compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification

Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a) of this section;

(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Civil Service Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Civil actions; jurisdiction; relief

Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter.

(d) Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices

When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

(e) Duty of Government agency or official

Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.

(Pub. L. 90-202, § 15, as added Pub. L. 93-259, § 28(b)(2), Apr. 8, 1974, 88 Stat. 74.)

EFFECTIVE DATE

Section effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

CROSS REFERENCES

Equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin, see section 7151 of Title 5, Government Organization and Employees.

§ 634. Authorization of appropriations

There are hereby authorized to be appropriated such sums, not in excess of $5,000,000 for any fiscal year, as may be necessary to carry out this chapter.

(Pub. L. 90-202, § 17, formerly § 16, Dec. 15, 1967, 81 Stat. 608, renumbered and amended Pub. L. 93-259, § 28(a)(5), (b)(1), Apr. 8, 1974, 88 Stat. 74.)

AMENDMENTS

1974—Pub. L. 93-259, § 28(a)(5), increased appropriations authorization to $5,000,000 from $3,000,000.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 5108; title 15 sections 2080, 2603; title 25 section 450m.

§ 651. Congressional statement of findings and declaration of purpose and policy

(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under this chapter;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research re-

lating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this chapter, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

(Pub. L. 91-596, § 2, Dec. 29, 1970, 84 Stat. 1590.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(3), (11), and (12), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under this section and Tables volume.

EFFECTIVE DATE

Section 34 of Pub. L. 91-596 provided that: "This Act [which enacted this chapter and section 3142-1 of Title 42, The Public Health and Welfare, amended section 553 of this title, sections 5108, 5314, 5315, and 7902 of Title 5, Government Organization and Employees, sections 633 and 636 of Title 15, Commerce and Trade, section 1114 of Title 18, Crimes and Criminal Procedure, and section 1421 of Title 49, Transportation, and enacted provisions set out as notes under this section and section 1114 of Title 18] shall take effect one hundred and twenty days after the date of its enactment [Dec. 29, 1970]."

SHORT TITLE

Section 1 of Pub. L. 91-596 provided: "That this Act [which enacted this chapter and section 3142-1 of Title 42, The Public Health and Welfare, amended section 553 of this title, sections 5108, 5314, 5315, and 7902 of Title 5, Government Organization and Employees, sections 633 and 636 of Title 15, Commerce and Trade, section 1114 of Title 18, Crimes and Criminal Procedure, and section 1421 of Title 49, Transportation, and enacted provisions set out as notes under this section and section 1114 of Title 18] may be cited as the 'Occupational Safety and Health Act of 1970'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 671 of this title.

§ 652. Definitions

For the purposes of this chapter—

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this chapter.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

(4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1), has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on December 29, 1970.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health established under this chapter.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this chapter.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this chapter.

(Pub. L. 91-596, § 3, Dec. 29, 1970, 84 Stat. 1591.)

REFERENCES IN TEXT

This chapter, referred to in introductory phrase and in pars. (2), (11), (13), and (14) was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

§ 653. Geographic applicability; judicial enforcement; applicability to existing standards; report to Congress on duplication and coordination of Federal laws; workmen's compensation law or common law or statutory rights, duties, or liabilities of employers and employees unaffected

(a) This chapter shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Lake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this chapter by the courts established for areas in which there are no United States district courts having jurisdiction.

(b)(1) Nothing in this chapter shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 2021 of title 42, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act [41 U.S.C. 35 et seq.], the Service Contract Act of 1965 [41 U.S.C. 351 et seq.], Public Law 91-54, Act of August 9, 1969, Public Law 85-742, Act of August 23, 1958, and the National Foundation on Arts and Humanities Act [20 U.S.C. 951 et seq.] are superseded on the effective date of corresponding standards, promulgated under this chapter, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this chapter shall be deemed to be occupational safety and health standards issued under this chapter, as well as under such other Acts.

(3) The Secretary shall, within three years after the effective date of this chapter, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this chapter and other Federal laws.

(4) Nothing in this chapter shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

(Pub. L. 91-596, § 4, Dec. 29, 1970, 84 Stat. 1592.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

The Outer Continental Shelf Lands Act, referred to in subsec. (a), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables volume.

The Act of June 30, 1936, commonly known as the Walsh-Healey Act, referred to in subsec. (b)(2), is act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, which is classified generally to section 35 et seq. of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables volume. See, also, section 262 of this title.

The Service Contract Act of 1965, referred to in subsec. (b)(2), is Pub. L. 89-286, Oct. 22, 1965, 79 Stat. 1034, as amended, which is classified generally to chapter 6 (§ 351 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 351 of Title 41 and Tables volume.

Pub. L. 91-54, Act of August 9, 1969, referred to in subsec. (b)(2), is Pub. L. 91-54, Aug. 9, 1969, 83 Stat. 96, which enacted section 333 of Title 40, Public Buildings, Property, and Works, and amended section 2 of Pub. L. 87-581, Aug. 13, 1962, 76 Stat. 357, set out as a note under section 327 of Title 40.

Pub. L. 85-742, Act of August 23, 1958, referred to in subsec. (b)(2), is Pub. L. 85-742, Aug. 23, 1958, 72 Stat. 835, which amended section 941 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as a note under section 941 of Title 33.

The National Foundation on the Arts and the Humanities Act, referred to in subsec. (b)(2), is Pub. L. 89-209, Sept. 29, 1965, 79 Stat. 845, as amended, which is classified principally to subchapter I (§ 951 et seq.) of chapter 26 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 20 and Tables volume.

The effective date of this chapter, referred to in subsec. (b)(2), (3), is the effective date of Pub. L. 91-596, which is 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91-596, set out as an Effective Date note under section 651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 673 of this title; title 15 section 2608.

§ 654. Duties of employers and employees

(a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this chapter.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

(Pub. L. 91-596, § 5, Dec. 29, 1970, 84 Stat. 1593.)

REFERENCES IN TEXT

This chapter, referred to in text, was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 658, 666 of this title.

§ 655. Standards

(a) Promulgation by Secretary of national consensus standards and established Federal standards; time for promulgation; conflicting standards

Without regard to chapter 5 of title 5 or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this chapter and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) Procedure for promulgation, modification, or revocation of standards

The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this chapter, the Secretary may request the recommendations of an advisory committee appointed under section 656 of this title. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On on before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations

shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided,* That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of title 5, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard.

(c) Emergency temporary standards

(1) The Secretary shall provide, without regard to the requirements of chapter 5 of title 5, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with subsection (b) of this section, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Variances from standards; procedure

Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Statement of reasons for Secretary's determinations; publication in Federal Register

Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this chapter, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Judicial review

Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) Priority for establishment of standards

In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

(Pub. L. 91-596, § 6, Dec. 29, 1970, 84 Stat. 1593.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1), (8), (e), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

The effective date of this chapter, referred to in subsec. (a), is the effective date of Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91-596, set out as an Effective Date note under section 651 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 656, 657, 658, 666, 667, 668, 669 of this title; title 7 section 1942.

§ 656. Administration

(a) National Advisory Committee on Occupational Safety and Health; establishment; membership; appointment; Chairman; functions; meetings; compensation; secretarial and clerical personnel

(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the provisions of title 5 governing appointments in the competitive service, and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary

and the Secretary of Health, Education, and Welfare on matters relating to the administration of this chapter. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) Advisory committees; appointment; duties; membership; compensation; reimbursement to member's employer; meetings; availability of records; conflict of interest

An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 655 of this title. Each such committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

(c) Use of services, facilities, and personnel of Federal, State, and local agencies; reimbursement; employment of experts and consultants or organizations; renewal of contracts; compensation; travel expenses

In carrying out his responsibilities under this chapter, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, including traveltime, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government service employed intermittently, while so employed.

(Pub. L. 91-596, § 7, Dec. 29, 1970, 84 Stat. 1597.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (c), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 655 of this title.

§ 657. Inspections, investigations, and recordkeeping

(a) Authority of Secretary to enter, inspect, and investigate places of employment; time and manner

In order to carry out the purposes of this chapter, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.

(b) Attendance and testimony of witnesses and production of evidence; enforcement of subpoena

In making his inspections and investigations under this chapter the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the

United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) Maintenance, preservation, and availability of records; issuance of regulations; scope of records; periodic inspections by employer; posting of notices by employer; notification of employee of corrective action

(1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this chapter as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 655 of this title. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 655 of this title, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Obtaining of information

Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this chapter shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Employer and authorized employee representatives to accompany Secretary or his authorized representative on inspection of workplace; consultation with employees where no authorized employee representative is present

Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) of this section for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) Request for inspection by employees or representative of employees; grounds; procedure; determination of request; notification of Secretary or representative prior to or during any inspection of violations; procedure for review of refusal by representative of Secretary to issue citation for alleged violations

(1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the in-

spection, in writing, of any violation of this chapter which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g) Compilation, analysis, and publication of reports and information; rules and regulations

(1) The Secretary and Secretary of Health, Education, and Welfare are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

(2) The Secretary and the Secretary of Health, Education, and Welfare shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this chapter, including rules and regulations dealing with the inspection of an employer's establishment.

(Pub. L. 91-596, § 8, Dec. 29, 1970, 84 Stat. 1598.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c)(1), (d), (f)(2), (g)(2), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 667, 669, 673 of this title.

§ 658. Citations

(a) Authority to issue; grounds; contents; notice in lieu of citation for de minimis violations

If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 654 of this title, of any standard, rule or order promulgated pursuant to section 655 of this title, or of any regulations prescribed pursuant to this chapter, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(b) Posting

Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Secretary, at or near each place a violation referred to in the citation occurred.

(c) Time for issuance

No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(Pub. L. 91-596, § 9, Dec. 29, 1970, 84 Stat. 1601.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title, and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 659, 666, 667 of this title.

§ 659. Enforcement procedures

(a) Notification of employer of proposed assessment of penalty subsequent to issuance of citation; time for notification of Secretary by employer of contest by employer of citation or proposed assessment; citation and proposed assessment as final order upon failure of employer to notify of contest and failure of employees to file notice

If, after an inspection or investigation, the Secretary issues a citation under section 658(a) of this title, he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 666 of this title and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) of this section within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(b) Notification of employer of failure to correct in alloted time period violation for which citation was issued and proposed assessment of penalty for failure to correct; time for notification of Secretary by employer of contest by employer of notification of failure to correct or proposed assessment; notification or proposed assessment as final order upon failure of employer to notify of contest

If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 666 of this title by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the

notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(c) Advisement of Commission by Secretary of notification of contest by employer of citation or notification or of filing of notice by any employee or representative of employees; hearing by Commission; orders of Commission and Secretary; rules of procedure

If an employer notifies the Secretary that he intends to contest a citation issued under section 658(a) of this title or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days of the issuance of a citation under section 658(a) of this title, any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

(Pub. L. 91-596, § 10, Dec. 29, 1971, 84 Stat. 1601.)

REFERENCES IN TEXT

Section 666 of this title, referred to in subsecs. (a) and (b), was in the original section 17 of Pub. L. 91-596. Subsecs. (a) to (g) and (i) to (*l*) of such section 17 are classified to section 666 of this title. Subsec. (h) of such section 17 amended section 1114 of Title 18, Crimes and Criminal Procedure, and enacted note set out thereunder.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 660, 666, 667 of this title.

§ 660. Judicial review

(a) Filing of petition by persons adversely affected or aggrieved; orders subject to review; jurisdiction; venue; procedure; conclusiveness of record and findings of Commission; appropriate relief; finality of judgment

Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 659 of this title may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28. Petitions filed under this subsection shall be heard expeditiously.

(b) Filing of petition by Secretary; orders subject to review; jurisdiction; venue; procedure; conclusiveness of record and findings of Commission; enforcement of orders; contempt proceedings

The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) of this section shall govern such proceedings to the extent applicable. If no petition for review, as provided in sub-

section (a) of this section, is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 659 of this title, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a) of this section, the court of appeals may assess the penalties provided in section 666 of this title, in addition to invoking any other available remedies.

(c) Discharge or discrimination against employee for exercise of rights under this chapter; prohibition; procedure for relief

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph (2) of this subsection.

(Pub. L. 91-596, § 11, Dec. 29, 1970, 84 Stat. 1602.)

REFERENCES IN TEXT

Section 666 of this title, referred to in subsec. (b), was in the original section 17 of Pub. L. 91-596. Subsecs. (a) to (g) and (i) to (l) of such section 17 are classified to section 666 of this title. Subsec. (h) of such section 17 amended section 1114 of Title 18, Crimes and Criminal Procedure, and enacted note set out thereunder.

This chapter, referred to in subsec. (c)(1), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

§ 661. Occupational Safety and Health Review Commission

(a) Establishment; membership; appointment; Chairman

The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this chapter. The President shall designate one of the members of the Commission to serve as Chairman.

(b) Terms of office; removal by President

The terms of members of the Commission shall be six years except that (1) the members of the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) Principal office; hearings or other proceedings at other places

The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(d) Functions and duties of Chairman; appointment and compensation of hearing examiners and other employees

The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5.

(e) Quorum; official action

For the purpose of carrying out its functions under this chapter, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(f) Hearings and records open to public; promulgation of rules; applicability of Federal Rules of Civil Procedure

Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission has adopted a different

rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

(g) Depositions and production of documentary evidence; fees

The Commission may order testimony to be taken by deposition in any proceeding pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(h) Investigatory powers

For the purpose of any proceeding before the Commission, the provisions of section 161 of this title are hereby made applicable to the jurisdiction and powers of the Commission.

(i) Hearing examiner; determination; report as final order of Commission

A hearing examiner appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the hearing examiner shall become the final order of the Commission within thirty days after such report by the hearing examiner, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(j) Appointment and compensation of hearing examiners

Except as otherwise provided in this chapter, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5. Each hearing examiner shall receive compensation at a rate not less than that prescribed for GS–16 under section 5332 of title 5.

(Pub. L. 91-596, § 12(a), (b), (d)–(k), Dec. 29, 1970, 84 Stat. 1603–1605.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (e), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

The General Schedule, referred to in subsec. (d), is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Subsecs. (c) to (j) of this section consist of subsecs. (d) to (k) of section 12 of Pub. L. 91-596. Subsec. (c) of such section 12 amended sections 5314 and 5315 of Title 5, Government Organization and Employees.

§ 662. Injunction proceedings

(a) Petition by Secretary to restrain imminent dangers; scope of order

The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Appropriate injunctive relief or temporary restraining order pending outcome of enforcement proceeding; applicability of rule 65 of Federal Rules of Civil Procedure

Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Notification of affected employees and employers by inspector of danger and of recommendation to Secretary to seek relief

Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) of this section exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought

(d) Failure of Secretary to seek relief; writ of mandamus

If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

(Pub. L. 91-596, § 13, Dec. 29, 1970, 84 Stat. 1605.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was, in the original, this Act, meaning Pub. L. 91-596, Dec.

29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

Rule 65 of the Federal Rules of Civil Procedures, referred to in subsec. (b), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 663. Representation in civil litigation

Except as provided in section 518(a) of title 28 relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter but all such litigations shall be subject to the direction and control of the Attorney General.

(Pub. L. 91-596, § 14, Dec. 29, 1970, 84 Stat. 1606.)

REFERENCES IN TEXT

This chapter, referred to in text, was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

§ 664. Disclosure of trade secrets; protective orders

All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this chapter which contains or which might reveal a trade secret referred to in section 1905 of title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(Pub. L. 91-596, § 15, Dec. 29, 1970, 84 Stat. 1606.)

REFERENCES IN TEXT

This chapter, referred to in text, was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

§ 665. Variations, tolerances, and exemptions from required provisions; procedure; duration

The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this chapter as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

(Pub. L. 91-596, § 16, Dec. 29, 1970, 84 Stat. 1606.)

REFERENCES IN TEXT

This chapter, referred to in text, was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

§ 666. Civil and criminal penalties

(a) Willful or repeated violation

Any employer who willfully or repeatedly violates the requirements of section 654 of this title, any standard, rule, or order promulgated pursuant to section 655 of this title, or regulations prescribed pursuant to this chapter may be assessed a civil penalty of not more than $10,000 for each violation.

(b) Citation for serious violation

Any employer who has received a citation for a serious violation of the requirements of section 654 of this title, of any standard, rule, or order promulgated pursuant to section 655 of this title, or of any regulations prescribed pursuant to this chapter, shall be assessed a civil penalty of up to $1,000 for each such violation.

(c) Citation for violation determined not serious

Any employer who has received a citation for a violation of the requirements of section 654 of this title, of any standard, rule, or order promulgated pursuant to section 655 of this title, or of regulations prescribed pursuant to this chapter, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to $1,000 for each such violation.

(d) Failure to correct violation

Any employer who fails to correct a violation for which a citation has been issued under section 658(a) of this title within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 659 of this title initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than $1,000 for each day during which such failure or violation continues.

(e) Willful violation causing death to employee

Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 655 of this title, or of any regulations prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both.

(f) Giving advance notice of inspection

Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both.

(g) False statements, representations or certification

Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other docu-

ment filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(h) Violation of posting requirements

Any employer who violates any of the posting requirements, as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to $1,000 for each violation.

(i) Authority of Commission to assess civil penalties

The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(j) Determination of serious violation

For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(k) Procedure for payment of civil penalties

Civil penalties owned under this chapter shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

(Pub. L. 91-596, § 17(a)-(g), (i)-(*l*), Dec. 29, 1970, 84 Stat. 1606, 1607.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c), (e) to (h), and (k), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

CODIFICATION

Subsecs. (h) to (k) of this section consist of subsecs. (i) to (*l*) of section 17 of Pub. L. 91-596. Subsec. (h) of such section 17 amended section 1114 of Title 18, Crimes and Criminal Procedure, and enacted note set out thereunder.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 659, 660, 667 of this title.

§ 667. State jurisdiction and plans

(a) Assertion of State standards in absence of applicable Federal standards

Nothing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 655 of this title.

(b) Submission of State plan for development and enforcement of State standards to preempt applicable Federal standards

Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 655 of this title shall submit a State plan for the development of such standards and their enforcement.

(c) Conditions for approval of plan

The Secretary shall approve the plan submitted by a State under subsection (b) of this section, or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 655 of this title which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to this chapter which is at least as effective as that provided in section 657 of this title, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) Rejection of plan; notice and opportunity for hearing

If the Secretary rejects a plan submitted under subsection (b) of this section, he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) Discretion of Secretary to exercise authority over comparable standards subsequent to approval of State plans; duration; retention of jurisdiction by Secretary upon determination of enforcement of plan by State

After the Secretary approves a State plan submitted under subsection (b) of this section, he may, but shall not be required to, exercise his authority under sections 657, 658, 659, 662, and 666 of this title with respect to comparable standards promulgated under section 655 of this title, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) of this section are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c) of this section. Upon making the determination referred to in the preceding sentence, the provisions of sections 654(a)(2), 657 (except for the purpose of carrying out subsection (f) of this section), 658, 659, 662, and 666 of this title, and standards promulgated under section 655 of this title, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 658 or 659 of this title before the date of determination.

(f) Continuing evaluation by Secretary of State enforcement of approved plan; withdrawal of approval of plan by Secretary; grounds; procedure; conditions for retention of jurisdiction by State

The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) Judicial review of Secretary's withdrawal of approval or rejection of plan; jurisdiction; venue; procedure; appropriate relief; finality of judgment

The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(h) Temporary enforcement of State standards

The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from December 29, 1970, whichever is earlier.

(Pub. L. 91-596, § 18, Dec. 29, 1970, 84 Stat. 1608.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(3), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title, and Tables volume.

Section 666 of this title, referred to in subsec. (e), was in the original section 17 of Pub. L. 91-596. Subsecs. (a) to (g) and (i) to (l) of such section 17 are classified to section 666 of this title. Subsec. (h) of such section 17 amended section 1114 of Title 18, Crimes and Criminal Procedure, and enacted note set out thereunder.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 672 of this title; title 7 section 1942.

§ 668. Programs of Federal agencies

(a) Establishment, development, and maintenance by head of each Federal agency

It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 655 of this title. The head of each agency shall (after consultation with representatives of the employees thereof)—

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 655 of this title;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a)(3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e)(2) of title 5.

(b) Report by Secretary to President; report by President to Congress

The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(5) of this section, together with his evaluations of and recommendations derived from such reports. The President shall transmit annually to the Senate and the House of Representatives a report of the activities of Federal agencies under this section.

(c) Access by Secretary to records and reports required of agencies

The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a)(3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

(Pub. L. 91-596, § 19(a), (b), (d), Dec. 29, 1970, 84 Stat. 1609, 1610.)

CODIFICATION

Subsec. (c) of this section is subsec. (d) of section 19 of Pub. L. 91-596. Subsec. (c) of such section 19 amended section 7902 of Title 5, Government Organization and Employees.

FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

Occupational safety and health programs for federal employees and establishment of Federal Advisory Council on Occupational Safety and Health, see Ex. Ord. No. 11807, Sept. 28, 1974, 39 F.R. 35559, set out as a note under section 7902 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 410.

§ 669. Research and related activities

(a) Authority of Secretary of Health, Education, and Welfare to conduct research, experiments, and demonstrations, develop plans, establish criteria, promulgate regulations, authorize programs, and publish results and industrywide studies; consultations

(1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this chapter; and the Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this chapter.

(3) The Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

(4) The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this chapter. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

(5) The Secretary of Health, Education, and Welfare, in order to comply with his responsibilities under paragraph (2), and in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health, Education, and Welfare reasonably believes may endanger the health or safety of employees. The Secretary of Health, Education, and Welfare also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illnesses. Nothing in this or any other provision of this chapter shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health, Education, and Welfare shall furnish full financial or other assistance to such employer for the purpose of defraying any additional expense incurred by him in carrying out the measuring and recording as provided in this subsection.

(6) The Secretary of Health, Education, and Welfare shall publish within six months of December 29, 1970, and thereafter as needed but at least annually a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur. He shall determine following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, whether any sub-

stance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employers and affected employees as soon as possible. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 655 of this title, the Secretary of Health, Education, and Welfare shall immediately submit such determination to the Secretary, together with all pertinent criteria.

(7) Within two years of December 29, 1970, and annually thereafter the Secretary of Health, Education, and Welfare shall conduct and publish industrywide studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults.

(b) Authority of Secretary of Health, Education, and Welfare to make inspections and question employers and employees

The Secretary of Health, Education, and Welfare is authorized to make inspections and question employers and employees as provided in section 657 of this title in order to carry out his functions and responsibilities under this section.

(c) Contracting authority of Secretary of Labor; cooperation between Secretary of Labor and Secretary of Health, Education, and Welfare

The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this chapter. In carrying out his responsibilities under this subsection, the Secretary shall cooperate with the Secretary of Health, Education, and Welfare in order to avoid any duplication of efforts under this section.

(d) Dissemination of information to interested parties

Information obtained by the Secretary and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

(e) Delegation of functions of Secretary of Health, Education, and Welfare to Director of the National Institute for Occupational Safety and Health

The functions of the Secretary of Health, Education, and Welfare under this chapter shall, to the extent feasible, be delegated to the Director of the National Institute for Occupational Safety and Health established by section 671 of this title.

(Pub. L. 91-596, § 20, Dec. 29, 1970, 84 Stat. 1610.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (4), (5) and (e), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 671 of this title.

§ 670. Training and employee education

(a) Authority of Secretary of Health, Education, and Welfare to conduct education and informational programs; consultations

The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this chapter, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) Authority of Secretary of Labor to conduct short-term training of personnel

The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this chapter.

(c) Authority of Secretary of Labor to establish and supervise education and training programs and consult and advise interested parties

The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this chapter, and (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

(Pub. L. 91-596, § 21, Dec. 29, 1970, 84 Stat. 1612.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section referred to in section 671 of this title.

§ 671. National Institute for Occupational Safety and Health

(a) Statement of purpose

It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health, Education, and Welfare in order to carry out the policy set forth in section 651 of this title and to perform the functions of the Secretary of Health, Education, and Welfare under sections 669 and 670 of this title.

(b) Establishment; Director; appointment; term

There is hereby established in the Department of Health, Education, and Welfare a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the Secretary of Health, Education, and Welfare, and who shall serve for a term of six years unless previ-

ously removed by the Secretary of Health, Education, and Welfare.

(c) Development and establishment of standards; performance of functions of Secretary of Health, Education, and Welfare

The Institute is authorized to—

(1) develop and establish recommended occupational safety and health standards; and

(2) perform all functions of the Secretary of Health, Education, and Welfare under sections 669 and 670 of this title.

(d) Authority of Director

Upon his own initiative, or upon the request of the Secretary or the Secretary of Health, Education, and Welfare, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health, Education, and Welfare.

(e) Additional authority of Director

In addition to any authority vested in the Institute by other provisions of this section, the Director, in carrying out the functions of the Institute, is authorized to—

(1) prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;

(4) in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 5 of title 41, or any other provision of law relating to competitive bidding;

(8) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 529 of title 31; and

(9) make other necessary expenditures.

(f) Annual reports

The Director shall submit to the Secretary of Health, Education, and Welfare, to the President, and to the Congress an annual report of the operations of the Institute under this chapter, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as he deems appropriate.

(Pub. L. 91-596, § 22, Dec. 29, 1970, 84 Stat. 1612.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (e)(4), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 669 of this title.

§ 672. Grants to States

(a) Designation of State agency to assist State in identifying State needs and responsibilities and in developing State plans

The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 667 of this title to assist them—

(1) in identifying their needs and responsibilities in the area of occupational safety and health,

(2) in developing State plans under section 667 of this title, or

(3) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this chapter.

(b) Experimental and demonstration projects

The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) Designation by Governor of appropriate State agency for receipt of grant

The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Submission of application

Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(e) Approval or rejection of application

The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) Federal share

The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) Administration and enforcement of programs contained in approved State plans; Federal share

The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 667 of this title. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) of this section shall be applicable in determining the Federal share under this subsection.

(h) Report to President and Congress

Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

(Pub. L. 91-596, § 23, Dec. 29, 1970, 84 Stat. 1613.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

§ 673. Statistics

(a) Development and maintenance of program of collection, compilation, and analysis; employments subject to coverage; scope

In order to further the purposes of this chapter, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this chapter but shall not cover employments excluded by section 653 of this title. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(b) Authority of Secretary to promote, encourage, or engage in programs, make grants, and grant or contract for research and investigations

To carry out his duties under subsection (a) of this section, the Secretary may—

(1) promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

(2) make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and

(3) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) Federal share for grants

The Federal share for each grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) Utilization by Secretary of State or local services, facilities, and employees; consent; reimbursement

The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

(e) Reports by employers

On the basis of the records made and kept pursuant to section 657(c) of this title, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this chapter.

(f) Supersedure of agreements between Department of Labor and States for collection of statistics

Agreements between the Department of Labor and States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this chapter shall remain in effect until superseded by grants or contracts made under this chapter.

(Pub. L. 91-596, § 24, Dec. 29, 1970, 84 Stat. 1614.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (e), was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

The effective date of this chapter, referred to in subsec. (f), means the effective date of Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91-596, set out as an Effective Date note under section 651 of this title.

§ 674. Audit of grant recipient; maintenance of records; contents of records; access to books, etc.

(a) Each recipient of a grant under this chapter shall keep such records as the Secretary or the Secretary of Health, Education, and Welfare shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or

used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary or the Secretary of Health, Education, and Welfare, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this chapter that are pertinent to any such grant.

(Pub. L. 91-596, § 25, Dec. 29, 1970, 84 Stat. 1615.)

REFERENCES IN TEXT

This chapter, referred to in text, was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

§ 675. Annual reports by Secretary of Labor and Secretary of Health, Education, and Welfare; contents

Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this chapter, the progress toward achievement of the purpose of this chapter, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports shall include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this chapter, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between Government agencies and other interested parties in the implementation of this chapter during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by Government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this chapter.

(Pub. L. 91-596, § 26, Dec. 29, 1970, 84 Stat. 1615.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

§ 676. Omitted

CODIFICATION

Section, Pub. L. 91-596, § 27, Dec. 29, 1970, 84 Stat. 1616, which provided for the establishment of a National Commission on State Workmen's Compensation Laws to make an effective study and evaluation of State workmen's compensation laws to determine whether such laws provide an adequate, prompt, and equitable system of compensation for injury or death, with a final report to be transmitted to President and Congress not later than July 31, 1972, ninety days after which the Commission ceased to exist, has been omitted from this Code as executed.

§ 677. Separability of provisions

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 91-596, § 32, Dec. 29, 1970, 84 Stat. 1619.)

REFERENCES IN TEXT

This chapter, referred to in text, was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

§ 678. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter for each fiscal year such sums as the Congress shall deem necessary.

(Pub. L. 91-596, § 33, Dec. 29, 1970, 84 Stat. 1620.)

REFERENCES IN TEXT

This chapter, referred to in text, was, in the original, this Act, meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

CHAPTER 16—VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES

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(c) Waiver by President; national interest special circumstances for waiver of particular agreements.
794. Nondiscrimination under Federal grants.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 8104; title 20 sections 107a, 107d–4; title 21 section 1173; title 22 section 2102; title 38 section 2014; title 42 sections 303, 421, 422, 603, 1203, 1353, 1382d, 3024, 6005.

GENERAL PROVISIONS

§ 701. Congressional declaration of purpose

The purpose of this chapter is to provide a statutory basis for the Rehabilitation Services Administration, and to authorize programs to—

(1) develop and implement comprehensive and continuing State plans for meeting the current and future needs for providing vocational rehabilitation services to handicapped individuals and to provide such services for the benefit of such individuals, serving first those with the most severe handicaps, so that they may prepare for and engage in gainful employment;

(2) evaluate the rehabilitation potential of handicapped individuals;

(3) conduct a study to develop methods of providing rehabilitation services to meet the current and future needs of handicapped individuals for whom a vocational goal is not possible or feasible so that they may improve their ability to live with greater independence and self-sufficiency;

(4) assist in the construction and improvement of rehabilitation facilities;

(5) develop new and innovative methods of applying the most advanced medical technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and develop new and innovative methods of providing rehabilitation services to handicapped individuals through research, special projects, and demonstrations;

(6) initiate and expand services to groups of handicapped individuals (including those who are homebound or institutionalized) who have been underserved in the past;

(7) conduct various studies and experiments to focus on long neglected problem areas;

(8) promote and expand employment opportunities in the public and private sectors for handicapped individuals and to place such individuals in employment;

(9) establish client assistance pilot projects;

(10) provide assistance for the purpose of increasing the number of rehabilitation personnel and increasing their skills through training; and

(11) evaluate existing approaches to architectural and transportation barriers confronting handicapped individuals, develop new such approaches, enforce statutory and regulatory standards and requirements regarding

barrier-free construction of public facilities and study and develop solutions to existing architectural and transportation barriers impeding handicapped individuals.

(Pub. L. 93-112, § 2, Sept. 26, 1973, 87 Stat. 357.)

CODIFICATION

The content of Pub. L. 93-516, Dec. 7, 1974, 88 Stat. 1617, including provisions thereof which amended various sections of this chapter and enacted provisions set out as notes under this section, was originally contained in H.R. 14225, 93rd Congress, Second Session, which was pocket-vetoed during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974.

Pursuant to an order of the United States District Court for the District of Columbia (*Kennedy* v. *Jones*, D.C.D.C. 1976, 412 F.Supp. 353), H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub. L. 93-651. Therefore, for purposes of codification, this chapter should be deemed to have been amended by Pub. L. 93-651, Nov. 21, 1974, 89 Stat. 2-3, in exactly the same manner as it was amended by Pub. L. 93-516, Dec. 7, 1974, 88 Stat. 1617.

PRIOR PROVISIONS

Prior similar provisions were set out in section 31 of this title.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-230, § 1, Mar. 15, 1976, 90 Stat. 211, provided that: "This Act [amending sections 720(b)(1) and (2), 732(a), 741(b), 761(a)(1) and (2), 771(a), 772(a), 774(a)(1), 775(a), 783, 785(d), and 792(h) of this title and enacting provisions set out as a note under section 720 of this title] may be cited as the 'Rehabilitation Act Extension of 1976'."

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-516, title I, § 100, Dec. 7, 1974, 88 Stat. 1617, provided that: "This title [amending sections 702, 706, 720 to 722, 732, 741, 750, 761, 762, 771, 772, 774 to 776, 783, 785, and 792 of this title and enacting provisions set out as a note under section 702 of this title] shall be known as the 'Rehabilitation Act Amendments of 1974'."

An identical provision is contained in Pub. L. 93-651, title I, § 100, Nov. 21, 1974, 88 Stat. 1617. See Codification note above.

SHORT TITLE

Section 1 of Pub. L. 93-112 provided that Pub. L. 93-112, which enacted this chapter and repealed sections 31 to 41c and 42-1 to 42b of this title, may be cited as the "Rehabilitation Act of 1973".

WHITE HOUSE CONFERENCE ON HANDICAPPED INDIVIDUALS

Pub. L. 93-516, title III, §§ 300-306, Dec. 7, 1974, 88 Stat. 1631-1634, as amended by Pub. L. 94-224, §§ 1, 2, Feb. 27, 1976, 90 Stat. 201, provided that:

"SEC. 300. This title may be cited as the 'White House Conference on Handicapped Individuals Act'.

"SEC. 301. The Congress finds that—

"(1) the United States has achieved great and satisfying success in making possible a better quality of life for a large and increasing percentage of our population;

"(2) the benefits and fundamental rights of this society are often denied those individuals with mental and physical handicaps;

"(3) there are seven million children and at least twenty-eight million adults with mental or physical handicaps;

"(4) it is of critical importance to this Nation that equality of opportunity, equal access to all aspects of society and equal rights guaranteed by the Constitution of the United States be provided to all individuals with handicaps;

"(5) the primary responsibility for meeting the challenge and problems of individuals with handicaps has often fallen on the individual or his family;

"(6) it is essential that recommendations be made to assure that all individuals with handicaps are able to live their lives independently and with dignity, and that the complete integration of all individuals with handicaps into normal community living, working, and service patterns be held as the final objective; and

"(7) all levels of Government must necessarily share responsibility for developing opportunities for individuals with handicaps;

and it is therefore the policy of the Congress that the Federal Government work jointly with the States and their citizens to develop recommendations and plans for action in solving the multifold problems facing individuals with handicaps.

"SEC. 302. (a) The President is authorized to call a White House Conference on Handicapped Individuals not later than three years from the date of enactment of this title [Dec. 7, 1974] in order to develop recommendations and stimulate a national assessment of problems, and solutions to such problems, facing individuals with handicaps. Such a conference shall be planned and conducted under the direction of the National Planning and Advisory Council, established pursuant to subsection (b) of this section, and the Secretary of Health, Education, and Welfare (hereinafter referred to as the 'Secretary') and each Federal department and agency shall provide such cooperation and assistance to the Council, including the assignment of personnel, as may reasonably be required by the Secretary.

"(b)(1) There is established a National Planning Advisory Council (in this title referred to as the 'Council'), appointed by the Secretary, composed of twenty-eight members of whom not less than ten shall be individuals with handicaps appointed to represent all individuals with handicaps, and five shall be parents of individuals with handicaps appointed to represent all such parents and individuals. The Council shall provide guidance and planning for the Conference.

"(2) Any member of the Council who is otherwise employed by the Federal Government shall serve without compensation in addition to that received in his regular employment.

"(3) Members of the Council, other than those referred to in paragraph (1), shall receive compensation at rates not to exceed the daily rate prescribed for GS-18 under section 5332, title 5, United States Code, for each day they are engaged in the performance of their duties (including traveltime); and, while so serving away from their homes or regular places of business, they shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703, title 5, United States Code, for persons in Government service employed intermittently.

"(4) Such Council shall cease to exist one-hundred and twenty days after the submission of the final report required by section 302(e) [subsec. (e) of this section].

"(c) For the purpose of ascertaining facts and making recommendations concerning the utilization of skills, experience, and energies, and the improvement of the conditions of individuals with handicaps, the Conference shall bring together individuals with handicaps and members of their families and representatives of Federal, State, and local governments, professional experts, and members of the general public recognized by individuals with handicaps as being knowledgeable about problems affecting their lives.

"(d) Participants in the White House Conference, and in conferences and other activities leading up to the White House Conference at the local and State level are authorized to consider all matters related to the purposes of the Conference set forth in subsection

(a), but shall give special consideration to recommendations for:

"(1) providing education, health, and diagnostic services for all children early in life so that handicapping conditions may be discovered and treated;

"(2) assuring that every individual with a handicap receives appropriately designed benefits of the educational system;

"(3) assuring that individuals with handicaps have available to them all special services and assistance which will enable them to live their lives as fully and independently as possible;

"(4) enabling individuals with handicaps to have access to usable communication services and devices at costs comparable to other members of the population;

"(5) assuring that individuals with handicaps will have maximum mobility to participate in all aspects of society, including access to all publicly-assisted transportation services and, when necessary, alternative means of transportation at comparable cost;

"(6) improving utilization and adaptation of modern engineering and other technology to ameliorate the impact of handicapping conditions on the lives of individuals and especially on their access to housing and other structures;

"(7) assuring individuals with handicaps of equal opportunity with others to engage in gainful employment;

"(8) enabling individuals with handicaps to have incomes sufficient for health and for participation in family and community life as self-respecting citizens;

"(9) increasing research relating to all aspects of handicapping conditions, stressing the elimination of causes of handicapping conditions and the amelioration of the effects of such conditions;

"(10) assuring close attention and assessment of all aspects of diagnosis and evaluation of individuals with handicaps;

"(11) assuring review and evaluation of all governmental programs in areas affecting individuals with handicaps, and a close examination of the public role in order to plan for the future;

"(12) resolving the special problems of veterans with handicaps;

"(13) resolving the problems of public awareness and attitudes that restrict individuals with handicaps from participating in society to their fullest extent;

"(14) resolving the special problems of individuals with handicaps who are homebound or institutionalized;

"(15) resolving the special problems of individuals with handicaps who have limited English-speaking ability;

"(16) alloting funds for basic vocational rehabilitation services under part B of title I of the Rehabilitation Act of 1973 [sections 730 to 732 of this title]; in a fair and equitable manner in consideration of the factors set forth in section 407(a) of such Act [section 787 of this title]; and

"(17) promoting other related matters for individuals with handicaps.

"(e) A final report of the White House Conference on Handicapped Individuals shall be submitted by the Council to the President not later than one hundred and twenty days following the date on which the conference is called, and the findings and recommendations included therein shall be immediately made available to the public. The Council and the Secretary shall, within ninety days after the submission of such final reports, transmit to the President and the Congress their recommendations for administrative action and legislation necessary to implement the recommendations contained in such report.

"SEC. 303. (a) In carrying out the provisions of this title, the Council and the Secretary shall—

"(1) request the cooperation and assistance of such other Federal departments and agencies as may be appropriate, including Federal advisory bodies having responsibilities in areas affecting individuals with handicaps;

"(2) render all reasonable assistance, including financial assistance, to the States in enabling them to organize and conduct conferences on handicapped individuals prior to the White House Conference on Handicapped Individuals;

"(3) prepare and make available necessary background materials for the use of delegates to the White House Conference on Handicapped Individuals;

"(4) prepare and distribute such interim reports of the White House Conference on Handicapped Individuals as may be appropriate; and

"(5) engage such individuals with handicaps and additional personnel as may be necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service, and without regard to chapter 57 [51] and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates of pay not to exceed the rate prescribed for GS–18 under section 5332 of such title.

"(b) In carrying out the provisions of this title, the Secretary shall employ individuals with handicaps.

"SEC. 304. For the purpose of this title, the term 'State' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"SEC. 305. (a) From the sums appropriated pursuant to section 306 the Secretary is authorized to make a grant to each State, upon application of the chief executive thereof, in order to assist in meeting the costs of that State's participation in the Conference program, including the conduct of at least one conference within each such State.

"(b) Grants made pursuant to subsection (a) shall be made only with the approval of the Council.

"(c) Funds appropriated for the purposes of this subsection shall be apportioned among the States by the Secretary in accordance with their respective needs for assistance under this subsection, except that no State shall be apportioned more than $25,000 nor less than $10,000.

"SEC. 306. There are authorized to be appropriated, without fiscal year limitations, $2,000,000 to carry out the provisions of this title and such additional sums as may be necessary to carry out section 305. Sums so appropriated shall remain available for expenditure until September 30, 1978."

Provisions identical to those found in sections 300 to 306 of Pub. L. 93–516 as originally enacted are contained in sections 300 to 306 of Pub. L. 93–651.

EX. ORD. NO. 11758. DELEGATION OF AUTHORITY OF THE PRESIDENT

Ex. Ord. No. 11758, Jan. 15, 1974, 39 F.R. 2075, as amended by Ex. Ord. No. 11784, May 30, 1974, 39 F.R. 19443; Ex. Ord. No. 11867, June 19, 1975, 40 F.R. 26253, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The Director of the Office of Management and Budget is hereby designated and empowered to exercise, without approval, ratification, or other action of the President, the authority of the President under section 500(a) of the Rehabilitation Act of 1973 (87 Stat. 390, 29 U.S.C. 790) with respect to the transfer of unexpended appropriations.

SEC. 2. The Secretary of Labor is hereby designated and empowered to exercise, without approval, ratification, or other action of the President, the authority of the President (1) under section 503(a) of the Rehabilitation Act of 1973 [section 793(a) of this title] to prescribe regulations, after consultation with the Secretary of Defense and the Administrator of General Services, with respect to the employment of qualified handicapped individuals under Federal procurement contracts, and (2) under section 503(c) of that act [section 793c of this title] with respect to prescribing, by

regulation, guidelines for waiving the requirements of section 503 of the act [section 793 of this title]. Changes in any regulations prescribed by the Secretary pursuant to the preceding sentence shall be made only after consultation with the Secretary of Defense and the Administrator of General Services.

SEC. 3. The head of a Federal agency may, in conformity with the provisions of section 503(c) of the Rehabilitation Act of 1973 [section 793(c) of this title], and regulations issued by the Secretary of Labor pursuant to section 2 of this order, exempt any contract and, following consultation with the Secretary of Labor, any class of contracts, from the requirements of section 503 of the act [section 793 of this title].

SEC. 4. The Federal Procurement Regulations, the Armed Services Procurement Regulations, and, to the extent necessary, any supplemental or comparable regulation issued by any agency of the executive branch shall, following consultation with the Secretary of Labor, be amended to require, as a condition of entering into, renewing or extending any contract subject to the provisions of section 503 of the Rehabilitation Act of 1973 [section 793 of this title], inclusion of a provision requiring compliance with that section and regulations issued by the Secretary pursuant to section 2 of this order.

RICHARD NIXON.

§ 702. Rehabilitation Services Administration

(a) Establishment; appointment of Commissioner; principal officer and principal agency

There is established in the Office of the Secretary a Rehabilitation Services Administration which shall be headed by a Commissioner (hereinafter in this chapter referred to as the "Commissioner") appointed by the President by and with the advice and consent of the Senate. Except for subchapters IV and V of this chapter and as otherwise specifically provided in this chapter, such Administration shall be the principal agency, and the Commissioner shall be the principal officer, of such Department for carrying out this chapter. In the performance of his functions, the Commissioner shall be directly responsible to the Secretary or to the Under Secretary or an appropriate Assistant Secretary of such Department, as designated by the Secretary. The functions of the Commissioner shall not be delegated to any officer not directly responsible, both with respect to program operation and administration, to the Commissioner.

(b) Research; coordination and consultation

The Secretary, through the Commissioner in coordination with other appropriate programs in the Department of Health, Education, and Welfare, in carrying out research under this chapter shall establish the expertise and technological competence to, and shall, in consultation with, the National Science Foundation and the National Academy of Sciences develop and support, and stimulate the development and utilization (including production and distribution of new and existing devices) of, innovative methods of applying advanced medical technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems, and be responsible for carrying out the activities described in section 762(b)(2) of this title.

(c) Expenditure of funds only for programs, personnel, and administration of programs carried out under this chapter

The Secretary shall take whatever action is necessary to insure that funds appropriated pursuant to this chapter, as well as unexpended appropriations for carrying out the Vocational Rehabilitation Act, are expended only for the programs, personnel, and administration of programs carried out under this chapter.

(Pub. L. 93-112, § 3, Sept. 26, 1973, 87 Stat. 357; Pub. L. 93-516, title I, § 101(a), Dec. 7, 1974, 88 Stat. 1617; Pub. L. 93-651, title I, § 101(a), Nov. 21, 1974, 89 Stat. 2-3.)

REFERENCES IN TEXT

Vocational Rehabilitation Act, referred to in subsec. (c), is act June 2, 1920, ch. 219, 41 Stat. 735, which was classified generally to chapter 4 (§ 31 et seq.) of this title and was repealed by section 500(a) of the Rehabilitation Act of 1973, Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 357. The Rehabilitation Act of 1973 is classified generally to this chapter. Section 500(a), classified to section 790 of this title, provided in part that references to the Vocational Rehabilitation Act in any other provision of law be deemed references to the Rehabilitation Act of 1973.

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-516 substantially reenacted existing provisions, and in subsec. (a) as so reenacted, substituted reference to Office of the Secretary for reference to the Department of Health, Education, and Welfare, added requirement that the appointment of Commissioner be approved by the Senate, added provisions that the Commissioner shall be the principal officer of the Department for carrying out provisions of this chapter, that the Commissioner shall be directly responsible to the Secretary, Under Secretary, or Assistant Secretary, as the case may be, and that the functions of the Commissioner shall not be delegated to any officer not directly responsible to the Commissioner both with respect to program operation and administration, and struck out provisions relating to the procedure for delegation of functions of the Commissioner to other officers.

Pub. L. 93-651 amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 101(b) of Pub. L. 93-516 provided that: "The amendment made by subsection (a) of this section [amending subsec. (a) of this section] shall be effective sixty days after the date of enactment of this Act [Dec. 7, 1974]."

An identical provision is contained is section 101(b) of Pub. L. 93-651.

ADDITIONAL PERSONNEL FOR OFFICE FOR THE BLIND AND VISUALLY HANDICAPPED

Section 208(a) of Pub. L. 93-516 provided that: "The Secretary of Health, Education, and Welfare is directed to assign to the Office for the Blind and Visually Handicapped of the Rehabilitation Services Administration of the Department of Health, Education, and Welfare ten additional full-time personnel (or their equivalent), five of whom shall be supportive personnel, to carry out duties related to the administration of the Randolph-Sheppard Act [section 107 et seq. of Title 20, Education]."

An identical provision is contained in section 208(a) of Pub. L. 93-651.

PREFERENCE TO BLIND IN SELECTING PERSONNEL

Section 208(c) of Pub. L. 93-516 provided that: "In selecting personnel to fill any position under this section [authorizing assignment of 11 additional full-time personnel to the Office for the Blind and Visually Handicapped of the Rehabilitation Service Administration of the Department of Health, Education, and Welfare under subsecs. (a) and (b) of Pub. L. 93-516], the Secretary of Health, Education, and Welfare shall give preference to blind individuals."

An identical provision is contained in section 208(c) of Pub. L. 93-651.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 sections 1904, 4101.

§ 703. Advance funding

(a) For the purpose of affording adequate notice of funding available under this chapter, appropriations under this chapter are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(b) In order to effect a transition to the advance funding method of timing appropriation action, the authority provided by subsection (a) of this section shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(Pub. L. 93-112, § 4, Sept. 26, 1973, 87 Stat. 358.)

§ 704. Joint funding

Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this chapter, where funds are provided for a single project by more than one Federal agency to an agency or organization assisted under this chapter, the Federal agency principally involved may be designated to act for all in administering the funds provided, and, in such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each agency. When the principal agency involved is the Rehabilitation Services Administration, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this chapter, which requirement is inconsistent with the similar requirements of the administering agency under or pursuant to this chapter.

(Pub. L. 93-112, § 5, Sept. 26, 1973, 87 Stat. 359.)

DELEGATION OF AUTHORITY TO ISSUE JOINT FUNDING REGULATIONS

Authority of the President under this section delegated to the Administrator of General Services, see section 3 of Ex. Ord. No. 11867, June 19, 1975 40 F.R. 26253, set out as a note under section 4252 of Title 42, The Public Health and Welfare, and policy functions transferred to Director of Office of Management and Budget by section 1 of Ex. Ord. No. 11893, Dec. 31, 1975, 41 F.R. 1040, set out as a note under section 4252 of Title 42.

§ 705. Consolidated rehabilitation plan

(a) Election by State; agency concurrence

In order to secure increased flexibility to respond to the varying needs and local conditions within the State, and in order to permit more effective and interrelated planning and operation of its rehabilitation programs, the State may submit a consolidated rehabilitation plan which includes the State's plan under section 721(a) of this title and its program for persons with developmental disabilities under the Developmental Disabilities Services and Facilities Construction Amendments of 1970: *Provided*, That the agency administering such State's program under such Act concurs in the submission of such a consolidated rehabilitation plan.

(b) Approval by Secretary of consolidated rehabilitation plan meeting statutory requirements; submission by State of separate rehabilitation plans

Such a consolidated rehabilitation plan must comply with, and be administered in accordance with, all the requirements of this chapter and the Developmental Disabilities Services and Facilities Construction Amendments of 1970. If the Secretary finds that all such requirements are satisfied, he may approve the plan to serve in all respects as the substitute for the separate plans which would otherwise be required with respect to each of the programs included therein, or he may advise the State to submit separate plans for such programs.

(c) Noncompliance; assistance termination procedures

Findings of noncompliance in the administration of an approved consolidated rehabilitation plan, and any reductions, suspensions, or terminations of assistance as a result thereof, shall be carried out in accordance with the procedures set forth in subsections (c) and (d) of section 721 of this title.

(Pub. L. 93-112, § 6, Sept. 26, 1973, 87 Stat. 359.)

REFERENCES IN TEXT

The Developmental Disabilities Services and Facilities Construction Amendments of 1970, referred to in subsecs. (a) and (b), is Pub. L. 91-517, Oct. 30, 1970, 84 Stat. 1316, which enacted sections 2661a, 2666, and 2670 to 2677c of Title 42, The Public Health and Welfare, amended sections 2661, 2662 to 2665, 2691, and 2693 to 2696 of Title 42, enacted provisions set out as a note under section 2670 of Title 42, and amended provisions set out as a note under section 2661 of Title 42. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note, set out under section 2670 of Title 42 and Tables volume.

§ 706. Definitions

For the purposes of this chapter:

(1) The term "construction" means the construction of new buildings, the acquisition, expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of such buildings, and the term "cost of construction" includes architects' fees and acquisition of land in connection with construction but does not include the cost of offsite improvements.

(2) The term "criminal act" means any crime, including an act, omission, or possession under the laws of the United States or a State or unit of general local government which poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication or otherwise the person engaging in the act, omission, or possession was legally incapable of committing a crime.

(3) The term "establishment of a rehabilitation facility" means the acquisition, expansion, remodeling, or alteration of existing buildings necessary to adapt them to rehabilitation facility purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary may determine, in accordance with regulations he shall prescribe, in order to prevent inpairment of the objectives of, or duplication of, other Federal laws providing Federal assistance in the construction of such facilities), and the initial equipment for such buildings, and may include the initial staffing thereof.

(4) The term "evaluation of rehabilitation potential" means, as appropriate in each case:

(A) a preliminary diagnostic study to determine that the individual has a substantial handicap to employment, and that vocational rehabilitation services are needed;

(B) a diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed;

(C) an appraisal of the individual's patterns of work behavior and ability to acquire occupational skill, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment;

(D) any other goods or services provided for the purpose of ascertaining the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services;

(E) referral;

(F) the administration of these evaluation services; and

(G)(i) the provision of vocational rehabilitation services to any individual for a total period not in excess of eighteen months for the purpose of determining whether such individual is a handicapped individual, a handicapped individual for whom a vocational goal is not possible or feasible (as determined in accordance with section 722(c) of this title), or neither such individual; and (ii) an assessment, at least once in every ninety-day period during which such services are provided, of the results of the provision of such services to an individual to ascertain whether any of the determinations described in subclause (i) may be made.

(5) The term "Federal share" means 80 per centum, except that it shall mean 90 per centum for the purposes of part C of subchapter I of this chapter and as specifically set forth in section 771(b)(3) of this title: *Provided*, That with respect to payments pursuant to part B of subchapter I of this chapter to any State which are used to meet the costs of construction of those rehabilitation facilities identified in section 723(b)(2) of this title in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 771(b)(3) of this title applicable with respect to that State and that, for the purpose of determining the non-Federal share with respect to any State, expenditures by a political subdivision thereof or by a local agency shall, subject to such limitations and conditions as the Secretary shall by regulation prescribe, be regarded as expenditures by such State.

(6) The term "handicapped individual" means any individual who (A) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (B) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to subchapters I and III of this chapter. For the purposes of subchapters IV and V of this chapter, such term means any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment.

(7) The term "local agency" means an agency of a unit of general local government or of an Indian tribal organization (or combination of such units or organizations) which has an agreement with the State agency designated pursuant to section 721(a)(1) of this title to conduct a vocational rehabilitation program under the supervision of such State agency in accordance with the State plan approved under section 721 of this title. Nothing in the preceding sentence of this paragraph or in section 721 of this title shall be construed to prevent the local agency from utilizing another local public or nonprofit agency to provide vocational rehabilitation services: *Provided*, That such an arrangement is made part of the agreement specified in this paragraph.

(8) The term "nonprofit", when used with respect to a rehabilitation facility, means a rehabilitation facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of title 26.

(9) The term "public safety officer" means a person serving the United States or a State or unit of general local government, with or without compensation, in any activity pertaining to—

(A) the enforcement of the criminal laws, including highway patrol, or the maintenance of civil peace by the National Guard or the Armed Forces,

(B) a correctional program, facility, or institution where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees,

(C) a court having criminal or juvenile delinquent jurisdiction where the activity is potentially dangerous because of contact with

criminal suspects, defendants, prisoners, probationers, or parolees, or

(D) firefighting, fire prevention, or emergency rescue missions.

(10) The term "rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals: (A) vocational rehabilitation services which shall include, under one management, medical, psychological, social, and vocational services, (B) testing, fitting, or training in the use of prosthetic and orthotic devices, (C) prevocational conditioning or recreational therapy, (D) physical and occupational therapy, (E) speech and hearing therapy, (F) psychological and social services, (G) evaluation of rehabilitation potential, (H) personal and work adjustment, (I) vocational training with a view toward career advancement (in combination with other rehabilitation services), (J) evaluation or control of specific disabilities, (K) orientation and mobility services to the blind, and (L) extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market, except that all medical and related health services must be prescribed by, or under the formal supervision of, persons licensed to prescribe or supervise the provision of such services in the State.

(11) The term "Secretary", except when the context otherwise requires, means the Secretary of Health, Education, and Welfare.

(12) The term "severe handicap" means the disability which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure, respiratory or pulmonary dysfunction, and any other disability specified by the Secretary in regulations he shall prescribe.

(13) The term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands, and for the purposes of American Samoa and the Trust Territory of the Pacific Islands, the appropriate State agency designated as provided in section 721(a)(1) of this title shall be the Governor of American Samoa or the High Commissioner of the Trust Territory of the Pacific Islands, as the case may be.

(14) The term "vocational rehabilitation services" means those services identified in section 723 of this title which are provided to handicapped individuals under this chapter.

(Pub. L. 93-112, § 7, Sept. 26, 1973, 87 Stat. 359; Pub. L. 93-516, title I, § 111(a), Dec. 7, 1974, 88 Stat. 1619; Pub. L. 93-651, title I, § 111(a), Nov. 21, 1974, 89 Stat. 2-5.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in sections 41, 41a, 42-1, and 42a of this title.

AMENDMENTS

1974—Par. (6). Pub. L. 93-516 expanded the definition of handicapped individual to include for the purposes of subchapters IV and V of this chapter any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such as impairment, or is regarded as having such an impairment.

Pub. L. 93-651 amended par. (6) in exactly the same manner as it was amended by Pub. L. 93-516.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 793, 794 of this title; title 42 section 6862.

§ 707. Allotment percentage

(a) Percentage limitation; promulgation and computation; "United States" defined

(1) The allotment percentage for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (A) the allotment percentage shall in no case be more than 75 per centum or less than 33⅓ per centum, and (B) the allotment percentage for the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands shall be 75 per centum.

(2) The allotment percentages shall be promulgated by the Secretary between October 1 and December 31 of each even-numbered year, on the basis of the average of the per capita incomes of the States and of the United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning on the October 1 next succeeding such promulgation.

(3) The term "United States" means (but only for purposes of this subsection) the fifty States and the District of Columbia.

(b) Population determination

The population of the several States and of the United States shall be determined on the basis of the most recent data available, to be furnished by the Department of Commerce by October 1 of the year preceding the fiscal year for which funds are appropriated pursuant to statutory authorizations.

(Pub. L. 93-112, § 8, Sept. 26, 1973, 87 Stat. 362; Pub. L. 94-273, § 10, Apr. 21, 1976, 90 Stat. 378.)

PRIOR PROVISIONS

Prior similar provisions were set out in section 41 of this title.

AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94-273 substituted "October" for "July" wherever appearing therein and "December 31" for "September 30".

§ 708. Audit and examination of records; scope of disclosure; access to representatives

Each recipient of a grant or contract under this chapter shall keep such records as the Sec-

retary may prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant or contract, the total cost of the project or undertaking in connection with which such grant or contract is made or funds thereunder used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such records as will facilitate an effective audit. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of any grant or contract under this chapter which are pertinent to such grant or contract.

(Pub. L. 93-112, § 9, Sept. 26, 1973, 87 Stat. 362.)

§ 709. Nonduplication prohibition

In determining the amount of any State's Federal share of expenditures for planning, administration, and services incurred by it under a State plan approved in accordance with section 721 of this title, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any other provision of law, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds. No payment may be made from funds provided under one provision of this chapter relating to any cost with respect to which any payment is made under any other provision of this chapter.

(Pub. L. 93-112, § 10, Sept. 26, 1973, 87 Stat. 363.)

Prior Provisions

Prior similar provisions were set out in sections 33 and 42-1 of this title.

SUBCHAPTER I—VOCATIONAL REHABILITATION SERVICES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 706, 780, 783, 784 of this title.

Part A—General Provisions

§ 720. Federal grants

(a) Congressional declaration of purpose

The purpose of this subchapter is to authorize grants to assist States to meet the current and future needs of handicapped individuals, so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities.

(b) Authorization of appropriations

(1) For the purpose of making grants to States under part B of this subchapter to assist them in meeting costs of vocational rehabilitation services provided in accordance with State plans under section 721 of this title, there is authorized to be appropriated $650,000,000 for the fiscal year ending June 30, 1974, $680,000,000 for the fiscal year ending June 30, 1975, $720,000,000 for the fiscal year ending June 30, 1976, $740,000,000 for the fiscal year ending September 30, 1977, and $760,000,000 for the fiscal year ending September 30, 1978.

(2) For the purpose of carrying out part C of this subchapter (relating to grants to States and public and nonprofit agencies to assist them in meeting the cost of projects to initiate or expand services to handicapped individuals, especially those with the most severe handicaps) and part D of this subchapter (relating to the study of comprehensive service needs of individuals with the most severe handicaps), there is authorized to be appropriated $37,000,000 for the fiscal year ending June 30, 1974, $39,000,000 for the fiscal year ending June 30, 1975, $42,000,000 for the fiscal year ending June 30, 1976, and $25,000,000 for the fiscal years ending September 30, 1977, and September 30, 1978; and there is further authorized to be appropriated for such purposes for each such year such additional sums as the Congress may determine to be necessary. Of the sums appropriated under this paragraph for each such fiscal year, $1,000,000 in each such year shall be available only for the purpose of carrying out Part D of this subchapter.

(Pub. L. 93-112, title I, § 100, Sept. 26, 1973, 87 Stat. 363; Pub. L. 93-516, title I, § 102(a), Dec. 7, 1974, 88 Stat. 1618; Pub. L. 93-651, title I, § 102(a), Nov. 21, 1974, 89 Stat. 2-3; Pub. L. 94-230, §§ 2(a), 11(b)(2), (3), Mar. 15, 1976, 90 Stat. 211, 213.)

Codification

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

Prior Provisions

Prior similar provisions were set out in sections 31 and 42-1 of this title.

Amendments

1976—Subsec. (b)(1). Pub. L. 94-230, § 2(a)(1), added provisions authorizing appropriations of $740,000,000 for the fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(2), added provisions authorizing appropriations of $760,000,000 for the fiscal year ending Sept. 30, 1978.

Subsec. (b)(2). Pub. L. 94-230, § 2(a)(2), added provisions authorizing appropriations of $25,000,000 for the fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(3), added provisions authorizing appropriations of $25,000,000 for the fiscal year ending Sept. 30, 1978.

1974—Subsec. (b)(1). Pub. L. 93-516, § 102(a)(1), added provisions authorizing appropriation of $720,000,000 for fiscal year ending June 30, 1976.

Pub. L. 93-651, § 102(a)(1), amended subsec. (b)(1) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (b)(2). Pub. L. 93-516, § 102(a)(2), added provisions authorizing appropriation of $42,000,000 for fiscal year ending June 30, 1976.

Pub. L. 93-651, § 102(a)(2), amended subsec. (b)(2) in exactly the same manner as it was amended by Pub. L. 93-516.

Extension of Vocational Rehabilitation Programs Through Fiscal Year Ending September 30, 1978; Effective Date of 1976 Amendment

Section 11(a), (b)(1), (c) of Pub. L. 94-230, provided that:

"(a) Unless the Congress, before April 15, 1977, has passed legislation which would have the effect of extending the authorization of each program and activity the authorization for which is extended through the fiscal year ending September 30, 1977, by the amendments made by section 2 through section 10

[amending sections 720(b), 732(a), 741(b), 761(a)(1), (2), 771(a), 772(a), 774(a)(1), 775(a), 783, 785(d), and 792(h) of this title], each such authorization shall be automatically extended through the fiscal year ending September 30, 1978, in accordance with the amendments made by subsection (b).

"(b)(1) The amendments made by this subsection [amending sections 720(a), 732(a), 761(a)(1), (2), 771(a), 772(a), 774(a)(1), 775(a), 783, 785(d), and 792(h) of this title] shall take effect at the close of April 15, 1977, unless the Congress has passed legislation in accordance with the provisions of subsection (a).

"(c) For purposes of this section, the Congress shall not have been deemed to have passed legislation unless such legislation becomes law."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 730, 740 of this title.

§ 721. State plans

(a) Annual State plans; general and specific requirements

For each fiscal year in which a State desires to participate in programs under this subchapter, a State shall submit to the Secretary for his approval an annual plan for vocational rehabilitation services which shall—

(1) State agency for plan administration, designation; separate agencies for services to the blind and for other services; joint program; political subdivision participation, waiver; qualification of State agency

(A) designate a State agency as the sole State agency to administer the plan, or to supervise its administration by a local agency, except that (i) where under the State's law the State agency for the blind or other agency which provides assistance or services to the adult blind, is authorized to provide vocational rehabilitation services to such individuals, such agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind (or to supervise the administration of such part by a local agency) and a separate State agency may be designated as the sole State agency with respect to the rest of the State plan, and (ii) the Secretary, upon the request of a State, may authorize such agency to share funding and administrative responsibility with another agency of the State or with a local agency in order to permit such agencies to carry out a joint program to provide services to handicapped individuals, and may waive compliance with respect to vocational rehabilitation services furnished under such programs with the requirement of clause (4) of this subsection that the plan be in effect in all political subdivisions of that State;

(B) provide that the State agency so designated to administer or supervise the administration of the State plan, or (if there are two State agencies designated under subclause (A) of this clause) to supervise or administer the part of the State plan that does not relate to services for the blind, shall be (i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, (ii) the State agency administering or supervising the administration of education or vocational education in the State, or (iii) a State agency which includes at least two other major organizational units each of which administers one or more of the major public education, public health, public welfare, or labor programs of the State;

(2) State rehabilitation bureau; director; staff; major organizational status; separate units for services to the blind and for other services

provide, except in the case of agencies described in clause (1)(B)(i)—

(A) that the State agency designated pursuant to paragraph (1) (or each State agency if two are so designated) shall include a vocational rehabilitation bureau, division, or other organizational unit which (i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, and is responsible for the vocational rehabilitation program of such State agency, (ii) has a full-time director, and (iii) has a staff employed on such rehabilitation work of such organizational unit all or substantially all of whom are employed full time on such work; and

(B)(i) that such unit shall be located at an organizational level and shall have an organizational status within such State agency comparable to that of other major organizational units of such agency, or (ii) in the case of an agency described in clause (1)(B)(ii), either that such unit shall be so located and have such status, or that the director of such unit shall be the executive officer of such State agency; except that, in the case of a State which has designated only one State agency pursuant to clause (1) of this subsection, such State may, if it so desires, assign responsibility for the part of the plan under which vocational rehabilitation services are provided for the blind to one organizational unit of such agency, and assign responsibility for the rest of the plan to another organizational unit of such agency, with the provisions of this clause applying separately to each of such units;

(3) State financial participation

provide for financial participation by the State, or if the State so elects, by the State and local agencies to meet the amount of the non-Federal share;

(4) Political subdivision participation, waiver; regulations; funds of local agency for non-Federal share of cost of services

provide that the plan shall be in effect in all political subdivisions, except that in the case of any activity which, in the judgment of the Secretary, is likely to assist in promoting the vocational rehabilitation of substantially larger numbers of handicapped individuals or groups of handicapped individuals the Secretary may waive compliance with the requirement herein that the plan be in effect in all political subdivisions of the State to the extent and for such period as may be provided in accordance with regulations prescribed by him, but only if the non-Federal share of the cost of such vocational rehabilitation services is met from funds made available by a local agency (including, to the extent permitted by such regulations, funds,

contributed to such agency by a private agency, organization, or individual);

(5) Plans, policies, and methods for execution, administration, and supervision of State plan; expansion and improvement of services; priorities in order of selection; achievement of outcome and service goals

(A) contain the plans, policies, and methods to be followed in carrying out the State plan and in its administration and supervision, including a description of the method to be used to expand and improve services to handicapped individuals with the most severe handicaps; and, in the event that vocational rehabilitation services cannot be provided to all eligible handicapped individuals who apply for such services, show (i) the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided, and (ii) the outcomes and service goals, and the time within which they may be achieved, for the rehabilitation of such individuals, which order of selection for the provision of vocational rehabilitation services shall be determined on the basis of serving first those individuals with the most severe handicaps and shall be consistent with priorities in such order of selection so determined, and outcome and service goals for serving handicapped individuals, established in regulations prescribed by the Secretary; and

(B) provide satisfactory assurance to the Secretary that the State has studied and considered a broad variety of means for providing services to individuals with the most severe handicaps;

(6) Methods of administration; state employment requirement

provide for such methods of administration, other than methods relating to the establishment and maintenance of personnel standards, as are found by the Secretary to be necessary for the proper and efficient administration of the plan (including a requirement that the State agency and facilities in receipt of assistance under this subchapter shall take affirmative action to employ and advance in employment qualified handicapped individuals covered under, and on the same terms and conditions as set forth in, section 793 of this title);

(7) Personnel standards; State licensure laws and regulations; minimum standards for facilities and personnel utilized in providing rehabilitation services

contain (A) provisions relating to the establishment and maintenance of personnel standards, which are consistent with any State licensure laws and regulations, including provisions relating to the tenure, selection, appointment, and qualifications of personnel, and (B) provisions relating to the establishment and maintenance of minimum standards governing the facilities and personnel utilized in the provision of vocational rehabilitation services, but the Secretary shall exercise no authority with respect to the selection, method of selection, tenure of office, or compensation of any individual employed in accordance with such provision;

(8) Consideration of eligibility for similar benefits under any other program

provide, at a minimum, for the provision of the vocational rehabilitation services specified in clauses (1) through (3) of subsection (a) of section 723 of this title, and the remainder of such services specified in such section after full consideration of eligibility for similar benefits under any other program, except that, in the case of the vocational rehabilitation services specified in clauses (4) and (5) of subsection (a) of such section, such consideration shall not be required where it would delay the provision of such services to any individual;

(9) Individualized written rehabilitation program

provide that (A) an individualized written rehabilitation program meeting the requirements of section 722 of this title will be developed for each handicapped individual eligible for vocational rehabilitation services under this chapter, (B) such services will be provided under the plan in accordance with such program, and (C) records of the characteristics of each applicant will be kept specifying, as to those individuals who apply for services under this subchapter and are determined not to be eligible therefor, the reasons for such determinations in such detail as required by the Secretary in order for him to analyze and evaluate annually the reasons for and numbers of such ineligibility determinations as part of his responsibilities under section 781 of this title, and that the State agency will at least annually categorize and analyze such reasons and numbers and report this information to the Secretary and will, not later than 12 months after each such determination, review each such ineligibility determination in accordance with the criteria set forth in section 722 of this title;

(10) Reports of State agency; form; scope of information; time of report; correctness and verification

provide that the State agency will make such reports in such form, containing such information (including the data described in subclause (C) of clause (9) of this subsection, periodic estimates of the population of handicapped individuals eligible for services under this chapter in such State, specifications of the number of such individuals who will be served with funds provided under this chapter and the outcomes and service goals to be achieved for such individuals in each priority category specified in accordance with clause (5) of this subsection, and the service costs for each such category), and at such time as the Secretary may require to carry out his functions under this subchapter, and comply with such provisions as he may find necessary to assure the correctness and verification of such reports;

(11) Intergovernmental cooperation

provide for entering into cooperative arrangements with, and the utilization of the services and facilities of, the State agencies administering the State's public assistance programs, other programs for handicapped individuals, veterans programs, manpower programs, and public employment offices, and the Social Se-

curity Administration of the Department of Health, Education, and Welfare, the Veterans' Administration, and other Federal, State, and local public agencies providing services related to the rehabilitation of handicapped individuals;

(12) Community resources; utilization

provide satisfactory assurances to the Secretary that, in the provision of vocational rehabilitation services, maximum utilization shall be made of public or other vocational or technical training facilities or other appropriate resources in the community;

(13) Disabled Federal employees; disabled public safety officers

(A) provide that vocational rehabilitation services provided under the State plan shall be available to any civil employee of the United States disabled while in the performance of his duty on the same terms and conditions as apply to other persons, and

(B) provide that special consideration will be given to the rehabilitation under this chapter of a handicapped individual whose handicapping condition arises from a disability sustained in the line of duty while such individual was performing as a public safety officer and the proximate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities;

(14) Residency requirement; prohibition

provide that no residence requirement will be imposed which excludes from services under the plan any individual who is present in the State;

(15) Continuing studies

provide for continuing statewide studies of the needs of handicapped individuals and how these needs may be most effectively met (including the State's needs for rehabilitation facilities and review of the efficacy of the criteria employed with respect to ineligibility determinations described in subclause (C) of clause (9) of this subsection) with a view toward the relative need for services to significant segments of the population of handicapped individuals and the need for expansion of services to those individuals with the most severe handicaps;

(16) Employment review and reevaluation

provide for (A) periodic review and reevaluation of the status of handicapped individuals placed in extended employment in rehabilitation facilities (including workshops) to determine the feasibility of their employment, or training for employment, in the competitive labor market, and (B) maximum efforts to place such individuals in such employment or training whenever it is determined to be feasible;

(17) State facilities, construction; Federal share of construction costs; general grant and contract requirements applicable; nonreduction of other rehabilitation services

provide that where such State plan includes provisions for the construction of rehabilitation facilities—

(A) the Federal share of the cost of construction thereof for a fiscal year will not exceed an amount equal to 10 per centum of the State's allotment for such year,

(B) the provisions of section 776 of this title shall be applicable to such construction and such provisions shall be deemed to apply to such construction, and

(C) there shall be compliance with regulations the Secretary shall prescribe designed to assure that no State will reduce its efforts in providing other vocational rehabilitation services (other than for the establishment of rehabilitation facilities) because its plan includes such provisions for construction;

(18) Policy planning; trainee participation

provide satisfactory assurances to the Secretary that the State agency designated pursuant to clause (1) (or each State agency if two are so designated) and any sole local agency administering the plan in a political subdivision of the State will take into account, in connection with matters of general policy arising in the administration of the plan, the views of individuals and groups thereof who are recipients of vocational rehabilitation services (or, in appropriate cases, their parents or guardians), working in the field of vocational rehabilitation, and providers of vocational rehabilitation services; and

(19) Amendments; continuing studies and annual evaluation as basis

provide satisfactory assurances to the Secretary that the continuing studies required under clause (15) of this subsection, as well as an annual evaluation of the effectiveness of the program in meeting the goals and priorities set forth in the plan, will form the basis for the submission, from time to time as the Secretary may require, of appropriate amendments to the plan.

(b) Approval or disapproval by Secretary; notice and hearing

The Secretary shall approve any plan which he finds fulfills the conditions specified in subsection (a) of this section, and he shall disapprove any plan which does not fulfill such conditions. Prior to such disapproval, the Secretary shall notify a State of his intention to disapprove its plan, and he shall afford such State reasonable notice and opportunity for hearing.

(c) Noncompliance; payment limitation

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this section, finds that—

(1) the plan has been so changed that it no longer complies with the requirements of subsection (a) of this section; or

(2) in the administration of the plan there is a failure to comply substantially with any provision of such plan,

the Secretary shall notify such State agency that no further payments will be made to the State under this subchapter (or, in his discretion, that such further payments will be reduced, in accordance with regulations the Secretary shall prescribe, or that further payments will not be made to the State only for the projects under the parts of the State plan affected by such failure), until he is satisfied there is no longer any such failure. Until he is so satisfied, the Secretary shall make no further payments to such State under this subchapter (or shall limit payments to projects under those parts of the State plan in which there is no such failure).

(d) Judicial review; venue; record; agency action provisions applicable

If any State is dissatisfied with the Secretary's action under subsection (b) or (c) of this section, such State may appeal to the United States district court for the district where the capital of such State is located and judicial review of such action shall be on the record in accordance with the provisions of chapter 7 of title 5.

(Pub. L. 93-112, title I, § 101, Sept. 26, 1973, 87 Stat. 363; Pub. L. 93-516, title I, § 111(b)-(d), Dec. 7, 1974, 88 Stat. 1619, 1620; Pub. L. 93-651, title I, § 111(b)-(d), Nov. 21, 1974, 89 Stat. 2-5.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in sections 35, 41c, and 42-1 of this title.

AMENDMENTS

1974—Subsec. (a)(6). Pub. L. 93-516, § 111(b), added parenthetical provisions relating to the requirement that the State take affirmative action to employ and advance in employment qualified handicapped individuals covered under, and on the same terms and conditions as set forth in section 793 of this title.

Pub. L. 93-651, § 111(b), amended subsec. (a)(6) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (a)(9). Pub. L. 93-516, § 111(c), in par. (C), added provisions that the records be in such detail as required by the Secretary in order for him to analyze and evaluate annually the reasons for and numbers of such ineligibility determinations as part of his responsibilities under section 781 of this title, and that the state agency will at least annually categorize and analyze such reasons and numbers and report this information to the Secretary and will, not later than 12 months after each such determination, review each such ineligibility determination in accordance with the criteria set forth in section 722 of this title.

Pub. L. 93-651, § 111(c), amended subsec. (a)(9) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (a)(15). Pub. L. 93-516, § 111(d), substituted "needs for rehabilitation facilities and review of the efficacy of the criteria employed with respect to ineligibility determinations described in subclause (C) of clause (9) of this subsection" for "needs for rehabilitation."

Pub. L. 93-651, § 111(d), amended subsec. (a)(15) in exactly the same manner as it was amended by Pub. L. 93-516.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 705, 706, 709, 720, 722, 731, 732, 741, 762, 771, 772, 774, 776, 781, 786 of this title; title 20 section 107a; title 21 section 1173.

§ 722. Individualized written rehabilitation program

(a) Joint development by counselor or coordinator and handicapped individual; goods and services for handicapped individual; terms and conditions, rights and remedies

The Secretary shall insure that the individualized written rehabilitation program, or the specification of reasons for a determination of ineligibility prior to initiation of such program based on preliminary diagnosis, required by section 721(a)(9) of this title in the case of each handicapped individual is developed jointly by the vocational rehabilitation counselor or coordinator and the handicapped individual (or, in appropriate cases, his parents or guardians), and that such program meets the requirements set forth in subsection (b) of this section. Such written program shall set forth the terms and conditions, as well as the rights and remedies, under which goods and services will be provided to the individual, and, as appropriate, such specification of reasons for such an ineligibility determination shall set forth the rights and remedies, including recourse to the process set forth in subsection (b)(5) of this section, available to the individual in question.

(b) Annual review; joint redevelopment of terms; scope of program

Each individualized written rehabilitation program shall be reviewed on an annual basis at which time each such individual (or, in appropriate cases, his parents or guardians) will be afforded an opportunity to review such program and jointly redevelop its terms. Such program shall include, but not be limited to (1) a statement of long-range rehabilitation goals for the individual and intermediate rehabilitation objectives related to the attainment of such goals, (2) a statement of the speicfic vocational rehabilitation services to be provided, (3) the projected date for the initiation and the anticipated duration of each such service, (4) objective criteria and evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and, (5) where appropriate, a detailed explanation of the availability of a client assistance project established in such area pursuant to section 732 of this title.

(c) Determination and achievement of vocational goal; decision respecting potential and capability of achievement; annual review of decision

The Secretary shall also insure that (1) in making any determination of ineligibility referred to in subsection (a) of this section, or in developing and carrying out the individualized written rehabilitation program required by section 721 of this title in the case of each handicapped individual, emphasis is placed upon the determination and achievement of a vocational goal for such individual, (2) a decision that such an individual is not capable of achieving such a goal and thus not eligible for vocational rehabilitation services provided with assistance under this part, is made only in full consultation with such individual (or, in appropriate

cases, his parents or guardians), and only upon the certification, as an amendment to such written program, or as a part of the specification of reasons for an ineligibility determination, as appropriate, that the preliminary diagnosis or evaluation of rehabilitation potential, as appropriate, has demonstrated beyond any reasonable doubt that such individual is not then capable of achieving such a goal, and (3) any such decision, as an amendment to such written program, shall be reviewed at least annually in accordance with the procedure and criteria established in this section.

(Pub. L. 93-112, title I, § 102, Sept. 26, 1973, 87 Stat. 368; Pub. L. 93-516, title I, § 111(e), Dec. 7, 1974, 88 Stat. 1620; Pub. L. 93-651, title I, § 111(e), Nov. 21, 1974, 89 Stat. 2-5.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-516, § 111(e)(1), substituted "written rehabilitation program, or the specification of reasons for a determination of ineligibility prior to initiation of such program based on preliminary diagnosis," for "written rehabilitation program," and added provisions that the specifications of reasons for an ineligibility determination shall set forth the rights and remedies available to the individual in question, including recourse to the process set forth in subsec. (b)(5) of this section.

Pub. L. 93-651, § 111(e)(1), amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (c)(1). Pub. L. 93-516, § 111(e)(2), substituted "in making any determination of ineligibility referred to in subsection (a) of this section, or in developing and carrying out the individualized written rehabilitation program required by section 721 of this title in the case of each handicapped individual," for "in developing and carrying out individualized written rehabilitation program required by section 721 of this title in the case of each handicapped individual primary".

Pub. L. 93-651, § 111(e)(2) amended subsec. (c)(1) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (c)(2). Pub. L. 93-516, § 111(e)(3), substituted "program, or as a part of the specification of reasons for an ineligibility determination, as appropriate, that the preliminary diagnosis or evaluation of rehabilitation potential, as appropriate," for "program, that the evaluation of rehabilitation potential".

Pub. L. 93-651, § 111(e)(3), amended subsec. (c)(2) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (c)(3). Pub. L. 93-516, § 111(e)(4), substituted "such decision, as an amendment to such written program," for "such decision".

Pub. L. 93-651, § 111(e)(4), amended subsec. (c)(3) in exactly the same manner as it was amended by Pub. L. 93-516.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 721 of this title.

§ 723. Scope of vocational rehabilitation services

(a) Individual services

Vocational rehabilitation services provided under this chapter are any goods or services necessary to render a handicapped individual employable, including, but not limited to, the following:

(1) evaluation of rehabilitation potential, including diagnostic and related services, incidental to the determination of eligibility for, and the nature and scope of, services to be provided, including, where appropriate, examination by a physician skilled in the diagnosis and treatment of emotional disorders, or by a licensed psychologist in accordance with State laws and regulations, or both;

(2) counseling, guidance, referral, and placement services for handicapped individuals, including followup, follow-along, and other post-employment services necessary to assist such individuals to maintain their employment and services designed to help handicapped individuals secure needed services from other agencies, where such services are not available under this chapter;

(3) vocational and other training services for handicapped individuals, which shall include personal and vocational adjustment, books, and other training materials, and services to the families of such individuals as are necessary to the adjustment or rehabilitation of such individuals: *Provided*, That no training services in institutions of higher education shall be paid for with funds under this subchapter unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training;

(4) physical and mental restoration services, including, but not limited to, (A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial handicap to employment, but is of such nature that such correction or modification may reasonably be expected to eliminate or substantially reduce the handicap within a reasonable length of time, (B) necessary hospitalization in connection with surgery or treatment, (C) prosthetic and orthotic devices, (D) eyeglasses and visual services as prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select, (E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals suffering from end-stage renal disease, and (F) diagnosis and treatment for mental and emotional disorders by a physician or licensed psychologist in accordance with State licensure laws;

(5) maintenance, not exceeding the estimated cost of subsistence, during rehabilitation;

(6) interpreter services for deaf individuals, and reader services for those individuals determined to be blind after an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(7) recruitment and training services for handicapped individuals to provide them with new employment opportunities in the fields of rehabilitation, health, welfare, public safety, and law enforcement, and other appropriate service employment;

(8) rehabilitation teaching services and orientation and mobility services for the blind;

(9) occupational licenses, tools, equipment, and initial stocks and supplies;

(10) transportation in connection with the rendering of any vocational rehabilitation service; and

(11) telecommunications, sensory, and other technological aids and devices.

(b) Group services

Vocational rehabilitation services, when provided for the benefit of groups of individuals, may also include the following:

(1) in the case of any type of small business operated by individuals with the most severe handicaps the operation of which can be improved by management services and supervision provided by the State agency, the provision of such services and supervision, along or together with the acquisition by the State agency of vending facilities or other equipment and initial stocks and supplies; and

(2) the construction or establishment of public or nonprofit rehabilitation facilities and the provision of other facilities and services which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized rehabilitation written program of any one handicapped individual.

(Pub. L. 93-112, title I, § 103, Sept. 26, 1973, 87 Stat. 368.)

PRIOR PROVISIONS

Prior similar provisions were set out in sections 34, 35, 41, and 42a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 721 of this title.

§ 724. Non-Federal share for construction

For the purpose of determining the amount of payments to States for carrying out part B of this subchapter, the non-Federal share, subject to such limitations and conditions as may be prescribed in regulations by the Secretary, shall include contributions of funds made by any private agency, organization, or individual to a State or local agency to assist in meeting the costs of construction or establishment of a public or nonprofit rehabilitation facility, which would be regarded as State or local funds except for the condition, imposed by the contributor, limiting use of such funds to construction or establishment of such facility.

(Pub. L. 93-112, title I, § 104, Sept. 26, 1973, 87 Stat. 370.)

PRIOR PROVISIONS

Prior similar provisions were set out in section 32 of this title.

PART B—BASIC VOCATIONAL REHABILITATION SERVICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 706, 720, 724, 787 of this title.

§ 730. State allotments

(a) Computation; minimum amount; adjustments

For each fiscal year, each State shall be entitled to an allotment of an amount bearing the same ratio to the amount authorized to be appropriated under subsection (b)(1) of section 720 of this title for allotment under this section as the product of (1) the population of the State and (2) the square of its allotment percentage bears to the sum of the corresponding products for all the States. The allotment to any State (other than Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) under the first sentence of this subsection for any fiscal year which is less than one-quarter of 1 per centum of the amount appropriated under subsection (b)(1) of section 720 of this title, or $2,000,000, whichever is greater, shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotments to each of the remaining such States under the first sentence of this subsection, but with such adjustments as may be necessary to prevent the allotment of any such remaining States from being thereby reduced to less than that amount.

(b) Additional payments; authorization of additional appropriations

If the payment to a State under section 731(a) of this title for a fiscal year is less than the total payments such State received under section 2 of the Vocational Rehabilitation Act for the fiscal year ending June 30, 1973, such State shall be entitled to an additional payment (subject to the same terms and conditions applicable to other payments under this part) equal to the difference between such payment under section 731(a) of this title and the amount so received by it. Payments attributable to the additional payment to a State under this subsection shall be made only from appropriations specifically made to carry out this subsection, and such additional appropriations are hereby authorized.

(c) Unused funds; redistribution; increase in amount

Whenever the Secretary determines, after reasonable opportunity for the submission to him of comments by the State agency administering or supervising the program established under this subchapter that any payment of an allotment to a State under section 731(a) of this title for any fiscal year will not be utilized by such State in carrying out the purposes of this subchapter, he shall make such amount available for carrying out the purposes of this subchapter to one or more other States to the extent he determines such other State will be able to use such additional amount during such year for carrying out such purposes. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for the purposes of this part, be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.

(Pub. L. 93-112, title I, § 110, Sept. 26, 1973, 87 Stat. 370.)

REFERENCES IN TEXT

Section 2 of Vocational Rehabilitation Act, referred to in subsec. (b), is section 2 of act June 2, 1920, ch. 219, 41 Stat. 735, as amended, which provided for grants to States for vocational rehabilitation service services, including computation of allotments, amount of payments, adjusted Federal shares, and private con-

tributions for construction or establishment of facilities, and which was classified to section 32 of this title. Section 32 was repealed by section 500(a) of Pub. L. 93-112, effective 90 days after Sept. 26, 1973, and is now covered by this section and sections 724 and 731 of this title. See section 790 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in sections 32 and 42-1 of this title.

CONTINUATION OF FEDERAL PROGRAMS AND ACTIVITIES DURING FISCAL YEAR TRANSITION PERIOD FROM JULY 1, 1976, THROUGH SEPTEMBER 30, 1976

Pub. L. 94-274, title I, § 103, Apr. 21, 1976, 90 Stat. 385, provided that:

"For the purposes of the provisions of sections 110 and 120 of the Rehabilitation Act of 1973 (29 U.S.C. 730 and 740), the term 'fiscal year' includes the period of July 1, 1976, through September 30, 1976, and the exercise of authority pursuant to those provisions for that period shall be subject to the conditions stated in the following paragraphs:

"(1) the fixed dollar minimum allotment for any State (other than Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) under section 110 [this section] shall be $500,000, and

"(2) the minimum allotment to any State under section 120 [section 740 of this title] shall be $12,500."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 731 of this title.

§ 731. Payments to States

(a) Amount

From each State's allotment under this part for any fiscal year (including any additional payment to it under section 730(b) of this title), the Secretary shall pay to such State an amount equal to the Federal share of the cost of vocational rehabilitation services under the plan for such State approved under section 721 of this title, including expenditures for the administration of the State plan, except that the total of such payments to such State for such fiscal year may not exceed its allotment under subsection (a) (and its additional payment under subsection (b), if any) of section 730 of this title for such year and such payments shall not be made in an amount which would result in a violation of the provisions of the State plan required by clause (17) of section 721(a) of this title and except that the amount otherwise payable to such State for such year under this section shall be reduced by the amount (if any) by which expenditures from non-Federal sources during such year under this subchapter are less than expenditures under the State plan for the fiscal year ending June 30, 1972, under the Vocational Rehabilitation Act.

(b) Method of computation and payment

The method of computing and paying amounts pursuant to subsection (a) of this section shall be as follows:

(1) The Secretary shall, prior to the beginning of each calendar quarter or other period prescribed by him, estimate the amount to be paid to each State under the provisions of such subsection for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation, as the Secretary may find necessary.

(2) The Secretary shall pay, from the allotment available therefor, the amount so estimated by him for such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which he finds that his estimate of the amount to be paid the State for any prior period under such subsection was greater or less than the amount which should have been paid to the State for such prior period under such subsection. Such payment shall be made prior to audit or settlement by the General Accounting Office, shall be made through the disbursing facilities of the Treasury Department, and shall be in such installments as the Secretary may determine.

(Pub. L. 93-112, title I, § 111, Sept. 26, 1973, 87 Stat. 371.)

REFERENCES IN TEXT

Vocational Rehabilitation Act, referred to in subsec. (a), is act June 2, 1920, ch. 219, 41 Stat. 735, which was classified generally to chapter 4 (§ 31 et seq.) of this title and was repealed by section 500(a) of the Rehabilitation Act of 1973, Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 357. The Rehabilitation Act of 1973 is classified generally to this chapter. Section 500(a), classified to section 790 of this title, provided in part that references to the Vocational Rehabilitation Act in any other provision of law be deemed references to the Rehabilitation Act of 1973.

PRIOR PROVISIONS

Prior similar provisions were set out in sections 32 and 36 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 730 of this title; title 5 section 8104.

§ 732. Client assistance

(a) Amount of assistance for regional pilot projects; duties of counselors

From funds appropriated under section 774 of this title for special projects and demonstrations in excess of $11,860,000 the Secretary shall set aside up to $1,500,000, but no less than $500,000 for the fiscal year ending June 30, 1974, up to $2,500,000 but no less than $1,000,000 for the fiscal year ending June 30, 1975, up to $2,500,000 but no less than $1,000,000 for the fiscal year ending June 30, 1976, up to $2,500,000 but no less than $1,000,000 for the fiscal year ending September 30, 1977, and up to $2,500,000 but no less than $1,000,000 for the fiscal year ending September 30, 1978, to establish in no less than 7 nor more than 20 geographically dispersed regions client assistance pilot projects (hereinafter in this section referred to as "projects") to provide counselors to inform and advise all clients and client applicants in the project area of all available benefits under this chapter and, upon requests of such client or client applicant, to assist such clients or applicants in their relationships with projects, programs, and facilities providing services to them under this chapter. In the event that funds so appropriated under section 774 of this title do not exceed $11,860,000 in any fiscal year, the Secretary is authorized to utilize such funds to carry out this section.

(b) Regulations; requirements

The Secretary shall prescribe regulations which shall include the following requirements:

(1) Employment or benefit duplication

No employees of such projects shall be presently serving as staff or consultants or receiving benefits of any kind directly or indirectly from any rehabilitation project, program, or facility receiving assistance under this chapter in the project area.

(2) Access to policymaking and administrative personnel

Each project shall be afforded reasonable access to policymaking and administrative personnel in State and local rehabilitation programs, projects, and facilities.

(3) Annual reports; summary of accomplishments; statistical tabulation of cases; submittal to Congressional committees

The project shall submit an annual report, through the State agency designated pursuant to section 721 of this title, to the Secretary on the operation of the project during the previous year, including a summary of the work done and a uniform statistical tabulation of all cases handled by such project. A copy of each such report shall be submitted to the appropriate committees of the Congress by the Secretary, together with a summary of such reports and his evaluation of such projects, including appropriate recommendations.

(4) Graduate student services

Each State agency may enter into cooperative arrangements with institutions of higher education to secure the services in such projects of graduate students who are undergoing clinical training activities in related fields. No compensation with funds appropriated under this chapter shall be provided to such students.

(5) Availability of adequate services; availment of such services without discouragement

Reasonable assurance shall be given by the appropriate State agency that all clients or client applicants within the project area shall have the opportunity to receive adequate service under the project and shall not be pressured against or otherwise discouraged from availing themselves of the services available under such project.

(6) State agency for project funding, administration, and operation

The project shall be funded, administered, and operated directly by and with the concurrence of the State agency designated pursuant to section 721 of this title.

(Pub. L. 93-112, title I, § 112, Sept. 26, 1973, 87 Stat. 371; Pub. L. 93-516, title I, §§ 102(b), 111(f), Dec. 7, 1974, 88 Stat. 1618, 1620; Pub. L. 93-651, title I, §§ 102(b), 111(f), Nov. 21, 1974, 89 Stat. 2-3, 2-5; Pub. L. 94-230, §§ 2(b), 11(b)(4), Mar. 15, 1976, 90 Stat. 211, 213.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-230, § 2(b), added provisions authorizing appropriations up to $2,500,000 but no less than $1,000,000 for the fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, 11(b)(4), added provisions authorizing appropriations up to $2,500,000 but no less than $1,000,000 for the fiscal year ending Sept. 30, 1978.

1974—Subsec. (a). Pub. L. 93-516 substituted "in excess of $11,860,000" for "in excess of an amount equal to the amount obligated for expenditure for carrying out such projects and demonstrations from appropriations under the Vocational Rehabilitation Act in the fiscal year ending June 30, 1973,", authorized appropriation of up to $2,500,000 but no less than $1,000,000 for fiscal year ending June 30, 1976, and added provisions that in the event that funds so appropriated under section 774 of this title do not exceed $11,860,000 in any fiscal year, the Secretary is authorized to utilize such funds to carry out this section.

Pub. L. 93-651 amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94-230, set out as a note under section 720 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 722 of this title.

PART C—INNOVATION AND EXPANSION GRANTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 706, 720 of this title.

§ 740. State allotments

(a) Computation; minimum amount; adjustments

(1)[1] From the sums available pursuant to section 720(b)(2) of this title for any fiscal year for grants to States to assist them in meeting the costs described in section 741 of this title, each State shall be entitled to an allotment of an amount bearing the same ratio to such sums as the population of the State bears to the population of all the States. The allotment to any State under the preceding sentence for any fiscal year which is less than $50,000 shall be increased to that amount, and for the fiscal year ending June 30, 1974, no State shall receive less than the amount necessary to cover up to 90 per centum of the cost of continuing projects assisted under section 4(a)(2)(A) of the Vocational Rehabilitation Act [29 U.S.C. 34(a)(2)(A)], except that no such project may receive financial assistance under both the Vocational Rehabilitation Act [29 U.S.C. 31 et seq.] and this chapter for a total period of time in excess of three years. The total of the increase required by the preceding sentence shall be derived by proportionately reducing the allotments to each of the remaining States under the first sentence of this section, but with such adjustments as may be necessary to prevent the allotment of any of such remaining States from thereby being reduced to less than $50,000.

(b) Unused funds; redistribution; increase in amount

Whenever the Secretary determines that any amount of an allotment to a State for any fiscal year will not be utilized by such State in carrying out the purposes of this section, he shall make such amount available for carrying out the purposes of this section to one or more other States which he determines will be able

[1] So in original. There is no paragraph (2).

to use additional amounts during such year for carrying out such purposes. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for purposes of this part, be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.

(Pub. L. 93-112, title I, § 120, Sept. 26, 1973, 87 Stat. 372.)

REFERENCES IN TEXT

Vocational Rehabilitation Act, referred to in subsec. (a), is act June 2, 1920, ch. 219, 41 Stat. 735, which was classified generally to chapter 4 (§ 31 et seq.) of this title and was repealed by section 500(a) of the Rehabilitation Act of 1973, Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 357. Section 4(a)(2)(A) of the Vocational Rehabilitation Act was classified to section 34(a)(2)(A) of this title. The Rehabilitation Act of 1973 is classified generally to this chapter. Section 500(a), classified to section 790 of this title, provided in part that references to the Vocational Rehabilitation Act in any other provision of law be deemed references to the Rehabilitation Act of 1973.

PRIOR PROVISIONS

Prior similar provisions were set out in sections 33 and 42-1 of this title.

CONTINUATION OF FEDERAL PROGRAMS AND ACTIVITIES DURING FISCAL YEAR TRANSITION PERIOD FROM JULY 1, 1976 THROUGH SEPTEMBER 30, 1976

Authority to continue Federal programs and activities during the fiscal year transition period from July 1, 1976 through Sept. 30, 1976, and conditions imposed upon exercise of authority during transition period with respect to amounts, etc., see section 103 of Pub. L. 94-274, set out as a note under section 730 of this title.

§ 741. Payments to States

(a) Cost of planning, preparing for, and initiating special programs; prior approval of Secretary or State agency for certain expenditures

From each State's allotment under this part for any fiscal year, the Secretary shall pay to such State or, at the option of the State agency designated pursuant to section 721(a)(1) of this title, to a public or nonprofit organization or agency, a portion of the cost of planning, preparing for, and initiating special programs under the State plan approved pursuant to section 721 of this title to expand vocational rehabilitation services, including programs to initiate or expand such services to individuals with the most severe handicaps, or of special programs under such State plan to initiate or expand services to classes of handicapped individuals who have unusual and difficult problems in connection with their rehabilitation, particularly handicapped individuals who are poor, and responsibility for whose treatment, education, and rehabilitation is shared by the State agency designated in section 721 of this title with other agencies. The Secretary may require that any portion of a State's allotment under this section, but not more than 50 per centum of such allotment, may be expended in connection with only such projects as have first been approved by the Secretary. Any grant of funds under this section which will be used for direct services to handicapped individuals or for establishing or maintaining facilities which will render direct services to such individuals must have the prior approval of the appropriate State agency designated pursuant to section 721 of this title.

(b) Duration; period of availability; limitation; non-Federal share

Payments under this section with respect to any project may be made for a period of not to exceed three years beginning with the commencement of the project as approved, and sums appropriated for grants under this section shall remain available for such grants through the fiscal year ending September 30, 1979. Payments with respect to any project may not exceed 90 per centum of the cost of such project. The non-Federal share of the cost of a project may be in cash or in kind and may include funds spent for project purposes by a cooperating public or nonprofit agency provided that it is not included as a cost in any other federally financed program.

(c) Advances; reimbursement; conditions

Payments under this section may be made in advance or by way of reimbursement for services performed and purchases made, as may be determined by the Secretary, and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of this section.

(Pub. L. 93-112, title I, § 121, Sept. 26, 1973, 87 Stat. 373; Pub. L. 93-516, title I, § 102(c), Dec. 7, 1974, 88 Stat. 1618; Pub. L. 93-651, title I, § 102(c), Nov. 21, 1974, 89 Stat. 2-3; Pub. L. 94-230, § 2(c), Mar. 15, 1976, 90 Stat. 211.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in sections 33 and 34 of this title.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-230 substituted "September 30, 1979" for "June 30, 1977".

1974—Subsec. (b). Pub. L. 93-516 substituted "June 30, 1977" for "June 30, 1976".

Pub. L. 93-651 amended subsec. (b) in exactly the same manner as it was amended by Pub. L. 93-516.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 740 of this title.

PART D—COMPREHENSIVE SERVICE NEEDS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 720 of this title.

§ 750. Special study, research, and demonstrations

(a) Statement of objectives; intergovernmental coordination of programs

The Secretary shall conduct a comprehensive study, including research and demonstration projects of the feasibility of methods designed (1) to prepare individuals with the most severe handicaps for entry into programs under this chapter who would not otherwise be eligible to enter such programs due to the severity of their handicap, and (2) to assist individuals with the most severe handicaps who, due to the severity of their handicaps or other factors such as their age, cannot reasonably be expect-

ed to be rehabilitated for employment but for whom a program of rehabilitation could improve their ability to live independently or function normally within their family and community. Such study shall encompass the extent to which other programs administered by the Secretary do or might contribute to the objectives set forth in clauses (1) and (2) of the preceding sentence and the methods by which all such programs can be coordinated at Federal, State, and local levels with those carried out under this chapter to the end that individuals with the most severe handicaps are assured of receiving the kinds of assistance necessary for them to achieve such objectives.

(b) Report to Congress and President

The Secretary shall report the findings of the study, research, and demonstrations directed by subsection (a) of this section to the Congress and to the President together with such recommendations for legislative or other action as he may find desirable, not later than June 30, 1975.

(Pub. L. 93-112, title I, § 130, Sept. 26, 1973, 87 Stat. 374; Pub. L. 93-516, title I, § 111(g), Dec. 7, 1974, 88 Stat. 1621; Pub. L. 93-651, title I, § 111(g), Nov. 21, 1974, 89 Stat. 2-6.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93-516 substitued "June 30, 1975" for "February 1, 1975".

Pub. L. 93-651 amended subsec. (b) in exactly the same manner as it was amended by Pub. L. 93-516.

SUBCHAPTER II—RESEARCH AND TRAINING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 780, 783 of this title.

§ 760. Congressional declaration of purpose

The purpose of this subchapter is to authorize Federal assistance to State and public or nonprofit agencies and organizations to—

(a) plan and conduct research, demonstrations, and related activities in the rehabilitation of handicapped individuals, and

(b) plan and conduct courses of training and related activities designed to provide increased numbers of trained rehabilitation personnel, to increase the levels of skills of such personnel, and to develop improved methods of providing such training.

(Pub. L. 93-112, title II, § 200, Sept. 26, 1973, 87 Stat. 374.)

§ 761. Authorization of appropriations

(a) In order to make grants and contracts to carry out the purposes of this subchapter, there is authorized to be appropriated:

(1) For the purpose of carrying out section 762 of this title, $25,000,000 each for the fiscal years ending June 30, 1974, June 30, 1975, $32,000,000 for the fiscal year ending June 30, 1976, and $30,000,000 for the fiscal years ending September 30, 1977, and September 30, 1978; and there is further authorized to be appropriated for such purpose for each such year such additional sums as the Congress may determine to be necessary. Of the sums appropriated under this paragraph, 20 per centum and 25 per centum of the amounts appropriated in the first and second such fiscal years, respectively, and 25 per centum of the amounts appropriated in each succeeding fiscal year shall be available only for the purpose of carrying out activities under section 762(b)(2) of this title.

(2) For the purpose of carrying out section 763 of this title, $27,700,000 each for the fiscal years ending June 30, 1974, and June 30, 1975, $32,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending September 30, 1977, and $30,000,000 for the fiscal year ending September 30, 1978; and there is further authorized to be appropriated for such purpose for each such year such additional sums as the Congress may determine to be necessary.

(b) Funds appropriated under this subchapter shall remain available until expended.

(Pub. L. 93-112, title II, § 201, Sept. 26, 1973, 87 Stat. 374; Pub. L. 93-516, title I, § 103, Dec. 7, 1974, 88 Stat. 1618; Pub. L. 93-651, title I, § 103, Nov. 21, 1974, 89 Stat. 2-3; Pub. L. 94-230, §§ 3, 11(b)(5), (6), Mar. 15, 1976, 90 Stat. 211, 213.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in section 31 of this title.

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-230, § 3(a), added provisions authorizing appropriations of $30,000,000 for the fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(5), added provisions authorizing appropriations of $30,000,000 for the fiscal year ending Sept. 30, 1978.

Subsec. (a)(2). Pub. L. 94-230, § 3(b), added provisions authorizing appropriations of $25,000,000 for the fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(6), added provisions authorizing appropriations of $30,000,000 for the fiscal year ending Sept. 30, 1978.

1974—Subsec. (a)(1). Pub. L. 93-516, § 103(1), (2), added provisions authorizing appropriation of $32,000,000 for the fiscal year ending June 30, 1976, and substituted "such fiscal years, respectively, and 25 per centum of the amounts appropriated in each succeeding fiscal year" for "such fiscal years, respectively,".

Pub. L. 93-651, § 103(1), (2), amended subsec. (a)(1) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (a)(2). Pub. L. 93-516, § 103(3), added provisions authorizing appropriation of $32,000,000 for the fiscal year ending June 30, 1976.

Pub. L. 93-651, § 103(3), amended subsec. (a)(2) in exactly the same manner as it was amended by Pub. L. 93-516.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and

(c) of Pub. L. 94-230, set out as a note under section 720 of this title.

§ 762. Research

(a) Federal grants and contracts for certain research projects and related activities

The Secretary, through the Commissioner, and in coordination with other appropriate programs in the Department of Health, Education, and Welfare, is authorized to make grants to and contracts with States and public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the cost of projects for the purpose of planning and conducting research, demonstrations, and related activities which bear directly on the development of methods, procedures, and devices to assist in the provision of vocational rehabilitation services to handicapped individuals, especially those with the most severe handicaps, under this chapter. Such projects may include medical and other scientific, technical, methodological, and other investigations into the nature of disability, methods of analyzing it, and restorative techniques; studies and analyses of industrial, vocational, social, psychological, economic, and other factors affecting rehabilitation of handicapped individuals; special problems of homebound and institutionalized individuals; studies analyses, and demonstrations of architectural and engineering design adapted to meet the special needs of handicapped individuals; and related activities which hold promise of increasing knowledge and improving methods in the rehabilitation of handicapped individuals and individuals with the most severe handicaps.

(b) Federal grants for specialized research activities

In addition to carrying out projects under subsection (a) of this section, the Secretary, through the Commissioner, and in coordination with other appropriate programs in the Department of Health, Education, and Welfare, is authorized to make grants to pay part or all of the cost of the following specialized research activities:

(1) Rehabilitation Research and Training Centers; establishment

Establishment and support of Rehabilitation Research and Training Centers to be operated in collaboration with institutions of higher education for the purpose of providing coordinated and advanced programs of research in rehabilitation and training of rehabilitation research personnel, including, but not limited to, graduate training. Grants may include funds for services rendered by such a center to handicapped individuals in connection with such research and training activities.

(2) Rehabilitation Engineering Research Centers; establishment

Establishment and support of Rehabilitation Engineering Research Centers to (A) develop innovative methods of applying advanced medical technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems through planning and conducting research, including cooperative research with public or private agencies and organizations, designed to produce new scientific knowledge, equipment, and devices suitable for solving problems in the rehabilitation of handicapped individuals and for reducing environmental barriers, and to (B) cooperate with State agencies designated pursuant to section 721 of this title in developing systems of information exchange and coordination to promote the prompt utilization of engineering and other scientific research to assist in solving problems in the rehabilitation of handicapped individuals.

(3) Spinal cord injury research

Conduct of a program for spinal cord injury research, to include support of spinal cord injuries projects and demonstrations established pursuant to section 773(b) of this title, which will (A) insure dissemination of research findings among all such centers, (B) provide encouragement and support for initiatives and new approaches by individual and institutional investigators, and (C) establish and maintain close working relationships with other governmental and voluntary institutions and organizations engaged in similar efforts, in order to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among spinal cord injury investigators.

(4) End-stage renal disease research; prohibition against participation of persons eligible for services under other provisions of law

Conduct a program for end-stage renal disease research, to include support of projects and demonstrations for providing special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the rehabilitation of individuals suffering from such disease and which will (A) insure dissemination of research findings, (B) provide encouragement and support for initiatives and new approaches by individual and institutional investigators, and (C) establish and maintain close working relationships with other governmental and voluntary institutions and organizations engaged in similar efforts, in order to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among investigators in the field of end-stage renal disease. No person shall be selected to participate in such program who is eligible for services for such disease under any other provision of law.

(5) International rehabilitation research and development

Conduct of a program for international rehabilitation research, demonstration, and training for the purpose of developing new knowledge and methods in the rehabilitation of handicapped individuals in the United States, cooperating with and assisting in developing and sharing information found useful in other nations in the rehabilitation of handicapped individuals, and initiating a program to exchange experts and technical assistance in the field of rehabilitation of handicapped individuals with other nations as a means of increasing the levels of skill of rehabilitation personnel.

(c) General grant and contract requirements applicable

The provisions of section 776 of this title shall apply to assistance provided under this section, unless the context indicates to the contrary.

(Pub. L. 93-112, title II, § 202, Sept. 26, 1973, 87 Stat. 375; Pub. L. 93-516, title I, § 111(h), Dec. 7, 1974, 88 Stat. 1621; Pub. L. 93-651, title I, § 111(h), Nov. 21, 1974, 89 Stat. 2-6.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in section 34 of this title.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-516 substituted "studies, analyses, and demonstrations of architectural and engineering design adapted to meet the special needs of handicapped individuals" for "studies and analyses of of architectural and engineering design adapted to meet the special needs of handicapped individuals".

Pub. L. 93-651, amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 761, 781 of this title; title 38 sections 1904, 4101.

§ 763. Training

(a) Federal grants and contracts for personnel projects relating to training, traineeships, and related activities

The Secretary, through the Commissioner, in coordination with other appropriate programs in the Department of Health, Education, and Welfare, is authorized to make grants to and contracts with States and public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the cost of projects for training, traineeships, and related activities designed to assist in increasing the numbers of personnel trained in providing vocational services to handicapped individuals and in performing other functions necessary to the development of such services.

(b) Balanced program of assistance meeting needs of public and private rehabilitation programs and institutions; description of projects and fields contributing to rehabilitation of handicapped individuals; study period limitation

In making such grants or contracts, funds made available for any year will be utilized to provide a balanced program of assistance to meet the medical, vocational, and other personnel training needs of both public and private rehabilitation programs and institutions, to include projects in rehabilitation medicine, rehabilitation nursing, rehabilitation counseling, rehabilitation social work, rehabilitation psychology, physical therapy, occupational therapy, speech pathology and audiology, workshop and facility administration, prosthetics and orthodontics, specialized personnel in providing services to blind and deaf individuals, recreation for ill and handicapped individuals, and other fields contributing to the rehabilitation of handicapped individuals, including homebound and institutionalized individuals and handicapped individuals with limited English-speaking ability. No grant shall be made under this section for furnishing to an individual any one course of study extending for a period in excess of four years.

(Pub. L. 93-112, title II, § 203, Sept. 26, 1973, 87 Stat. 376.)

PRIOR PROVISIONS

Prior similar provisions were set out in section 34 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 761 of this title.

§ 764. Annual report to Congress; coverage of research and training activities

There shall be included in the annual report to the Congress required by section 784 of this title a full report on the research and training activities carried out under this subchapter and the extent to which such research and training has contributed directly to the development of methods, procedures, devices, and trained personnel to assist in the provision of vocational rehabilitation services to handicapped individuals and those with the most severe handicaps under this chapter.

(Pub. L. 93-112, title II, § 204, Sept. 26, 1973, 87 Stat. 376.)

SUBCHAPTER III—SPECIAL FEDERAL RESPONSIBILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 706, 780, 783 of this title.

§ 770. Congressional declaration of purpose

The purpose of this subchapter is to—

(1) authorize grants and contracts to assist in the construction and initial staffing of rehabilitation facilities;

(2) authorize grants and contracts to assist in the provision of vocational training services to handicapped individuals;

(3) authorize grants for special projects and demonstrations which hold promise of expanding or otherwise improving rehabilitation services to handicapped individuals, including individuals with spinal cord injuries, older blind individuals, and deaf individuals whose maximum vocational potential has not been reached, which experiment with new types of patterns of services or devices for the rehabilitation of handicapped individuals (including opportunities for new careers for handicapped individuals, and for other individuals in programs serving handicapped individuals) and which provide vocational rehabilitation services to handicapped migratory agricultural workers or seasonal farmworkers;

(4) establish and operate a National Center for Deaf-Blind Youth and Adults; and

(5) establish uniform grant and contract requirements for programs assisted under this subchapter and certain other provisions of this chapter.

(Pub. L. 93-112, title III, § 300, Sept. 26, 1973, 87 Stat. 377.)

§ 771. Grants for construction of rehabilitation facilities, initial staffing, and planning assistance

(a) Authorization of appropriations; period of availability of moneys

For the purpose of making grants and contracts under this section for construction of rehabilitation facilities, initial staffing, and planning assistance, there is authorized to be appropriated such sums as may be necessary for the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, September 30, 1977, and September 30, 1978. Amounts so appropriated shall remain available for expenditure with respect to construction projects funded or initial staffing grants made under this section prior to October 1, 1980.

(b) Rehabilitation facilities construction grants; applications for assistance; general grant and contract requirements applicable; amount

(1) The Secretary is authorized to make grants to assist in meeting the costs of construction of public or nonprofit rehabilitation facilities. Such grants may be made to States and public or nonprofit organizations and agencies for projects for which applications are approved by the Secretary under this section.

(2) To be approved, an application for a grant for a construction project under this section must conform to the provisions of section 776 of this title.

(3) The amount of a grant under this section with respect to any construction project in any State shall be equal to the same percentage of the cost of such project as the Federal share which is applicable in the case of rehabilitation facilities (as defined in section 291o(g) of title 42), in such State, except that if the Federal share with respect to rehabilitation facilities in such State is determined pursuant to subsection (b)(2) of section 291o of title 42, the percentage of the cost for purposes of this section shall be determined in accordance with regulations prescribed by the Secretary designed to achieve as nearly as practicable results comparable to the results obtained under such subparagraph.

(c) Staffing grants; amount

The Secretary is also authorized to make grants to assist in the initial staffing of any public or nonprofit rehabilitation facility constructed after September 26, 1973 (whether or not such construction was financed with the aid of a grant under this section) by covering part of the costs (determined in accordance with regulations the Secretary shall prescribe) of compensation of professional or technical personnel of such facility during the period beginning with the commencement of the operation of such facility and ending with the close of four years and three months after the month in which such operation commenced. Such grants with respect to any facility may not exceed 75 per centum of such costs for the period ending with the close of the fifteenth month following the month in which such operation commenced, 60 per centum of such costs for the first year thereafter, 45 per centum of such costs for the second year thereafter, and 30 per centum of such costs for the third year thereafter.

(d) Planning grants

The Secretary is also authorized to make grants upon application approved by the State agency designated under section 721 of this title to administer the State plan, to public or nonprofit agencies, institutions, or organizations to assist them in meeting the cost of planning rehabilitation facilities and the services to be provided by such facilities.

(Pub. L. 93-112, title III, § 301, Sept. 26, 1973, 87 Stat. 377; Pub. L. 93-516, title I, § 104, Dec. 7, 1974, 88 Stat. 1618; Pub. L. 93-651, title I, § 104, Nov. 21, 1974, 89 Stat. 2-4; Pub. L. 94-230, §§ 4, 11(b)(7), Mar. 15, 1976, 90 Stat. 211, 213; Pub. L. 94-273, § 3(18), Apr. 21, 1976, 90 Stat. 377.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in section 41a of this title.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-273 substituted "October" for "July", which substitution has already been made by section 4 of Pub. L. 94-230. See Amendment note set out below.

Pub. L. 94-230, § 4, extended authorization of appropriation for fiscal year ending Sept. 30, 1977, and substituted "October 1, 1980" for "July 1, 1978".

Pub. L. 94-230, § 11(b)(7), extended authorization of appropriations for fiscal year ending Sept. 30, 1978.

1974—Subsec. (a). Pub. L. 93-516 extended authorization of appropriation for fiscal year ending June 30, 1976, and substituted "July 1, 1978" for "July 1, 1977".

Pub. L. 93-651 amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94-230, set out as a note under section 720 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 706 of this title.

§ 772. Vocational training services for handicapped individuals

(a) Authorization of appropriations

For the purpose of making grants and contracts under this section, there is authorized to be appropriated such sums as may be necessary for the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, September 30, 1977, and September 30, 1978.

(b) Grants; authority of Secretary; individual allowances: factors and limitations; conditions

(1) The Secretary is authorized to make grants to States and public or nonprofit organizations and agencies to pay up to 90 per centum of the cost of projects for providing vocational training services to handicapped individuals, especially those with the most severe handicaps, in public or nonprofit rehabilitation facilities.

(2)(A) Vocational training services for purposes of this subsection shall include training with a view toward career advancement; train-

ing in occupational skills; related services, including work evaluation, work testing, provision of occupational tools and equipment required by the individual to engage in such training, and job tryouts; and payment of weekly allowances to individuals receiving such training and related services.

(B) Such allowances may not be paid to any individual for any period in excess of two years, and such allowances for any week shall not exceed $30 plus $10 for each of the individual's dependents, or $70, whichever is less. In determining the amount of such allowances for any individual, consideration shall be given to the individual's need for such an allowance, including any expenses reasonably attributable to receipt of training services, the extent to which such an allowance will help assure entry into and satisfactory completion of training, and such other factors, specified by the Secretary, as will promote such individual's capacity to engage in gainful and suitable employment.

(3) The Secretary may make a grant for a project pursuant to this subsection only on his determination that (A) the purpose of such project is to prepare handicapped individuals, especially those with the most severe handicaps, for gainful and suitable employment; (B) the individuals to receive training services under such project will include only those who have been determined to be suitable for and in need of such training services by the State agency or agencies designated as provided in section 721(a)(1) of this title of the State in which the rehabilitation facility is located; (C) the full range of training services will be made available to each such individual, to the extent of his need for such services; and (D) the project, including the participating rehabilitation facility and the training services provided, meet such other requirements as he may prescribe in regulations for carrying out the purposes of this subsection.

(c) Operation grants; buildings' use prohibition

(1) The Secretary is authorized to make grants to public or nonprofit rehabilitation facilities, or to an organization or combination of such facilities, to pay the Federal share of the cost of projects to analyze, improve, and increase their professional services to handicapped individuals, their management effectiveness, or any other part of their operations affecting their capacity to provide employment and services for such individuals.

(2) No part of any grant made pursuant to this subsection may be used to pay costs of acquiring, constructing, expanding, remodeling, or altering any building.

(Pub. L. 93-112, title III, § 302, Sept. 26, 1973, 87 Stat. 378; Pub. L. 93-516, title I, § 105, Dec. 7, 1974, 88 Stat. 1619; Pub. L. 93-651, title I, § 105, Nov. 21, 1974, 89 Stat. 2-4; Pub. L. 94-230, §§ 5, 11(b)(8), Mar. 15, 1976, 90 Stat. 212, 213.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in section 41b of this title.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-230, § 5, extended authorization of appropriation for fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(8), extended authorization of appropriations for fiscal year ending Sept. 30, 1978.

1974—Subsec. (a). Pub. L. 93-516 extended authorization of appropriation for fiscal year ending June 30, 1976.

Pub. L. 93-651 amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94-230, set out as a note under section 720 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 776 of this title.

§ 773. Mortgage insurance for rehabilitation facilities

(a) Statement of purpose

It is the purpose of this section to assist and encourage the provision of urgently needed facilities for programs for handicapped individuals.

(b) Definitions

For the purpose of this section the terms "mortgagee", "maturity date", and "State" shall have the meanings respectively set forth in section 207 of the National Housing Act [12 U.S.C. 1713].

(c) Authority of Secretary; amount; terms and conditions; commitment date; Federal tax exemption of interest

The Secretary, in consultation with the Secretary of Housing and Urban Development, and subject to the provisions of section 776 of this title, is authorized to insure up to 100 per centum of any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon, except that no mortgage of any public agency shall be insured under this section if the interest from such mortgage is exempt from Federal taxation.

(d) Conditions

In order to carry out the purpose of this section, the Secretary is authorized to insure any mortgage which covers construction of a public or nonprofit rehabilitation facility, including equipment to be used in its operation, subject to the following conditions:

(1) The mortgage shall be executed by a mortgagor, approved by the Secretary, who demonstrates ability successfully to operate one or more programs for handicapped individuals. The Secretary may in his discretion require any such mortgagor to be regulated or restricted as to minimum charges and methods of financing, and, in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the forego-

ing matters, the Secretary may make such contracts, with and acquire for not to exceed $100 such stock of[1] interest in, such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the Rehabilitation Facilities Insurance Fund (established by subsection (h) of this section), and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgage shall involve a principal obligation in an amount not to exceed 90 per centum of the estimated replacement cost of the property or project, including equipment to be used in the operation of the rehabilitation facility, when the proposed improvements are completed and the equipment is installed, but not including any cost covered by grants in aid under this chapter or any other Federal Act.

(3) The mortgage shall—

(A) provide for complete amortization by periodic payments within such term as the Secretary shall prescribe, and

(B) bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed such per centum per annum on the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market.

(e) Premium and appraisal charges; annual payment in advance; limitation

The Secretary shall fix and collect premium charges for the insurance of mortgages under this section which shall be payable annually in advance by the mortgagee, either in cash or in debentures of the Rehabilitation Facilities Insurance Fund (established by subsection (h) of this section) issued at par plus accrued interest. In the case of any mortgage such charge shall be not less than an amount equivalent to one-fourth of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any one time, without taking into account delinquent payments or prepayments. In addition to the premium charge herein provided for, the Secretary is authorized to charge and collect such amounts as he may deem reasonable for the appraisal of a property or project during construction, but such charges for appraisal and inspection shall not aggregate more than 1 per centum of the original principal face amount of the mortgage.

(f) Release of property from lien; terms and conditions

The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he shall by regulation prescribe.

(g) Functions, powers, and duties of Secretary; formal delegation agreement for delegation of functions; rental housing insurance provisions applicable

(1) The Secretary shall have the same functions, powers, and duties (insofar as applicable) with respect to the insurance of mortgages under this section as the Secretary of Housing and Urban Development has with respect to the insurance of mortgages under title II of the National Housing Act [12 U.S.C. 1707 et seq.]. The Secretary may, pursuant to a formal delegation agreement containing regulations prescribed by him, delegate to the Secretary of Housing and Urban Development authority to administer this section in accordance with such delegation agreement.

(2) The provisions of subsections (e), (g), (h), (i), (j), (k), (*l*), and (n) of section 207 of the National Housing Act [12 U.S.C. 1713] shall apply to mortgages insured under this section; except that, for the purposes of their application with respect to such mortgages, all references in such provisions to the General Insurance Fund shall be deemed to refer to the Rehabilitation Facilities Insurance Fund (established by subsection (h) of this section) and all references in such provisions to "Secretary" shall be deemed to refer to the Secretary of Health, Education, and Welfare.

(h) Rehabilitation Facilities Insurance Fund; establishment; revolving fund; charges for general operational expenses of Rehabilitation Services Administration relating to insured mortgages; deposit in Treasury or investment of unused funds; debentures, purchase authority; credits and debits; authorization of appropriations; total mortgage insurance limitation

(1) There is hereby created a Rehabilitation Facilities Insurance Fund which shall be used by the Commissioner as a revolving fund for carrying out all the insurance provisions of this section. All mortgages insured under this section shall be insured under and be the obligation of the Rehabilitation Facilities Insurance Fund.

(2) The general expenses of the operations of the Rehabilitation Services Administration relating to mortgages insured under this section may be charged to the Rehabilitation Facilities Insurance Fund.

(3) Moneys in the Rehabilitation Facilities Insurance Fund not needed for the current operations of the Rehabilitation Services Administration with respect to mortgages insured under this section shall be deposited with the Treasurer of the United States to the credit of such fund, or invested in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States. The Commissioner may, with the approval of the Secretary of the Treasury, purchase in the open market debentures issued as obligations of the Rehabilitation Facilities Insurance Fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

(4) Premium charges, adjusted premium charges, and appraisals and other fees received on account of the insurance of any mortgage under this section, the receipts derived from property covered by such mortgages and from any claims, debts, contracts, property, and security assigned to the Secretary in connection therewith, and all earnings as the assets of the fund, shall be credited to the Rehabilitation Facilities Insurance Fund. The principal of, and

[1] So in original. Probably should read "or".

interest paid and to be paid on, debentures which are the obligation of such fund, cash insurance payments, and adjustments, and expense incurred in the handling, management, renovation, and disposal of properties acquired, in connection with mortgages insured under this section, shall be charged to such fund.

(5) There are authorized to be appropriated to provide initial capital for the Rehabilitation Facilities Insurance Fund, and to assure the soundness of such fund thereafter, such sums as may be necessary, except that the total amount of outstanding mortgages insured shall not exceed $200,000,000.

(Pub. L. 93-112, title III, § 303, Sept. 26, 1973, 87 Stat. 379.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (g)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 762 of this title.

§ 774. Special projects and demonstrations

(a) Authorization of appropriations

(1) For the purpose of making grants under this section for special projects and demonstrations (and research and evaluation connected therewith) there is authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1974, $17,000,000 for the fiscal year ending June 30, 1975, $20,000,000 for the fiscal year ending June 30, 1976, and such sums as may be necessary for the fiscal years ending September 30, 1977, and September 30, 1978; and there is further authorized to be appropriated for such purposes for each such year such additional sums as the Congress may determine to be necessary.

(2) Of the amounts appropriated pursuant to paragraph (1) of this subsection, 5 per centum in each such fiscal year shall be available only for the purpose of making grants under subsection (c) of this section, and there is authorized to be appropriated in each such fiscal year such additional amount as may be necessary to equal, when added to the amount made available for the purpose of making grants under such subsection an amount of $5,000,000 to be available for each such fiscal year.

(b) Severely handicapped individuals, persons with spinal cord injuries, older blind individuals, and deaf individuals; regional system of multidisciplinary services for spinal cord injuries

The Secretary, subject to the provisions of section 776 of this title, shall make grants to States and public or nonprofit agencies and organizations for paying part or all of the cost of special projects and demonstrations (and research and evaluation in connection therewith) (1) for establishing programs and facilities for providing vocational rehabilitation services which hold promise of expanding or otherwise improving rehabilitation services to handicapped individuals (especially those with the most severe handicaps) including individuals with spinal cord injuries, older blind individuals, and deaf individuals, whose maximum vocational potential has not been reached, (2) for applying new types or patterns of services or devices (including opportunities for new careers for handicapped individuals or other individuals in programs servicing handicapped individuals) and (3) for operating programs (including renovation and construction of facilities, where appropriate) to demonstrate methods of making recreational activities fully accessible to handicapped individuals. Projects and demonstrations providing services to individuals with spinal cord injuries shall include provisions to—

(A) establish, on an appropriate regional basis, a multidisciplinary system of providing vocational and other rehabilitation services, specifically designed to meet the special needs of individuals with spinal cord injuries, including acute care as well as periodic inpatient or outpatient followup and services;

(B) demonstrate and evaluate the benefits to individuals with spinal cord injuries served in, and the degree of cost effectiveness of, such a regional system;

(C) demonstrate and evaluate existing, new, and improved methods and equipment essential to the care, management, and rehabilitation of individuals with spinal cord injuries; and

(D) demonstrate and evaluate methods of community outreach for individuals with spinal cord injuries and community education in connection with the problems of such individuals in areas such as housing, transportation, recreation, employment, and community activities.

(c) Handicapped migratory agricultural workers and seasonal farmworkers, and their families

The Secretary, subject to the provisions of section 776 of this title, is authorized to make grants to any State agency designated pursuant to a State plan approved under section 721 of this title or to any local agency participating in the administration of such a plan, to pay up to 90 per centum of the cost of projects or demonstrations for the provision of vocational rehabilitation services to handicapped individuals, as determined in accordance with rules prescribed by the Secretary of Labor, who are migratory agricultural workers or seasonal farmworkers, and to members of their families (whether or not handicapped) who are with them, including maintenance and transportation of such individuals and members of their families where necessary to the rehabilitation of such individuals. Maintenance payments under this section shall be consistent with any maintenance payments made to other handicapped individuals in the State under this chapter. Such grants shall be conditioned upon satisfactory assurance that in the provision of such services there will be appropriate cooperation between the grantee and other public or nonprofit agencies and organizations having special skills and experience in the provision of services to migratory agricultural workers, seasonal farmworkers, or their families. This subsection shall be administered in coordination with other programs serving migrant agricultural workers and seasonal farmworkers, including programs under title I of the Elemen-

tary and Secondary Education Act of 1965 [20 U.S.C. 241a et seq.], section 311 of the Economic Opportunity Act of 1964 [42 U.S.C. 2861], the Migrant Health Act [42 U.S.C. 247d], and the Farm Labor Contractor Registration Act of 1963 [7 U.S.C. 2041 et seq.].

(d) Employment programs; contract authority

The Secretary is authorized to make contracts or jointly financed cooperative arrangements with employers and organizations for the establishment of projects designed to prepare handicapped individuals for gainful and suitable employment in the competitive labor market under which handicapped individuals are provided training and employment in a realistic work setting and such other services (determined in accordance with regulations prescribed by the Secretary) as may be necessary for such individuals to continue to engage in such employment.

(e) Technical assistance; compensation and travel expenses

(1) The Secretary is authorized, directly or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof, to provide technical assistance (A) to rehabilitation facilities, and (B) with the concurrence of the Board established by section 792 of this title, for the purpose of removal of architectural and transportation barriers, to any public or nonprofit agency, institution, organization or facility.

(2) Any such experts or consultants shall, while serving pursuant to such contracts, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the pro rata pay rate for a person employed as a GS–18, under section 5332 of title 5, including traveltime, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(Pub. L. 93–112, title III, § 304, Sept. 26, 1973, 87 Stat. 381; Pub. L. 93–516, title I, §§ 106, 111(i)–(k), Dec. 7, 1974, 88 Stat. 1619, 1621; Pub. L. 93–651, title I, §§ 106, 111(i)–(k), Nov. 21, 1974, 89 Stat. 2–4, 2–6; Pub. L. 94–230, §§ 6, 11(b)(9), Mar. 15, 1976, 90 Stat. 212, 213.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Elementary and Secondary Education Act of 1965 is classified generally to subchapter II (§ 241a et seq.) of chapter 13 of Title 20, Education. For complete classification of Title I to the Code, see Short Title note set out under section 241a of Title 20 and Tables volume.

The Migrant Health Act, referred to in subsec. (c), means section 319, formerly section 310, of act July 1, 1944, ch. 373, as added by Pub. L. 87–692, Sept. 25, 1962, 76 Stat. 592, which enacted section 247d of Title 42, The Public Health and Welfare.

The Farm Labor Contractor Registration Act of 1963, referred to in subsec. (c), is Pub. L. 88–582, Sept. 7, 1964, 78 Stat. 920, as amended, which is classified generally to chapter 52 (§ 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2041 of Title 7 and Tables volume.

CODIFICATION

For history of Pub. L. 93–651, which enacted amendments identical to Pub. L. 93–516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in sections 31, 34, 41b, and 42b of this title.

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94–230, § 6, added provisions authorizing appropriation of such sums as may be necessary for fiscal year ending Sept. 30, 1977.

Pub. L. 94–230, § 11(b)(9), added provisions authorizing appropriation of such sums as may be necessary for the fiscal year ending Sept. 30, 1978.

1974—Subsec. (a)(1). Pub. L. 93–516, § 106, added provisions authorizing apropriation of $20,000,000 for the fiscal year ending June 30, 1976.

Pub. L. 93–651, § 106, amended subsec. (a)(1) in exactly the same manner as it was amended by Pub. L. 93–516.

Subsec. (b). Pub. L. 93–516, § 111(i)(1), (2), substituted "handicapped individuals or other individuals" for "handicapped individuals for other individuals" in the parenthetical provisions in cl. (2), and added cl. (3).

Pub. L. 93–651, § 111(i)(1), (2), amended subsec. (b) in exactly the same manner as it was amended by Pub. L. 93–516.

Subsec. (c). Pub. L. 93–516, § 111(j), substituted "prescribed by the Secretary of Labor, who are migratory" for "prescribed by the Secretary of Labor, are migratory".

Pub. L. 93–651, § 111(j) amended subsec. (c) in exactly the same manner as it was amended by Pub. L. 93–516.

Subsec. (e)(1). Pub. L. 93–516, § 111(k), substituted "with the concurrence of the Board established by section 792 of this title, for the purpose of" for "for the purpose of" in par. (1)(B).

Pub. L. 93–651, § 111(k), amended subsec. (e)(1) in exactly the same manner as it was amended by Pub. L. 93–516.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94–230, set out as a note under section 720 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 732 of this title; title 42 section 6081.

§ 775. Helen Keller National Center for Deaf-Blind Youths and Adults

(a) Authorization of appropriations

For the purpose of establishing and operating a Helen Keller National Center for Deaf-Blind Youths and Adults, there is authorized to be appropriated such sums as may be necessary for construction, which shall remain available until expended, and such sums as may be necessary for operations for the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, September 30, 1977, and September 30, 1978.

(b) Statement of purposes; agreement for establishment and operation; designation

In order—

(1) to demonstrate methods of (A) providing the specialized intensive services, and other services, needed to rehabilitate handicapped individuals who are both deaf and blind, and

(B) training the professional and allied personnel needed adequately to staff facilities specifically designed to provide such services and training to such personnel who have been or will be working with deaf-blind individuals;

(2) to conduct research in the problems of, and ways of meeting the problems of rehabilitating, deaf-blind individuals; and

(3) to aid in the conduct of related activities which will expand or improve the services for or help improve public understanding of the problems of deaf-blind individuals;

the Secretary, subject to the provisions of section 776 of this title, is authorized to enter into an agreement with any public or nonprofit agency or organization for payment by the United States of all or part of the costs of the establishment and operation, including construction and equipment, of a center for vocational rehabilitation of handicapped individuals who are both deaf and blind, which center shall be known as the Helen Keller National Center for Deaf-Blind Youths and Adults.

(c) Proposals; preference

Any agency or organization desiring to enter into such agreement shall submit a proposal therefor at such time, in such manner, and containing such information as may be prescribed in regulations by the Secretary. In considering such proposals the Secretary shall give preference to proposals which (1) give promise of maximum effectiveness in the organization and operation of the Helen Keller National Center, and (2) give promise of offering the most substantial skill, experience, and capability in providing a broad program of service, research, training, and related activities in the field of rehabilitation of deaf-blind individuals.

(Pub. L. 93-112, title III, § 305, Sept. 26, 1973, 87 Stat. 383; Pub. L. 93-516, title I, § 107, Dec. 7, 1974, 88 Stat. 1619; Pub. L. 93-651, title I, § 107, Nov. 21, 1974, 89 Stat. 2-4; Pub. L. 94-230, §§ 7, 11(b)(10), Mar. 15, 1976, 90 Stat. 212, 213; Pub. L. 94-288, §§ 1, 2, May 21, 1976, 90 Stat. 520.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in section 42a of this title.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-288, § 1(a), added "Helen Keller" preceding "National".

Pub. L. 94-230, 7, extended authorization of appropriation for fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(10), extended authorization of appropriation for fiscal year ending Sept. 30, 1978.

Subsec. (b). Pub. L. 94-288, § 1(a), added "Helen Keller" preceding "National".

Subsec. (c). Pub. L. 94-288, § 1(b), substituted "the Helen Keller National Center" for "such Center".

1974—Subsec. (a). Pub. L. 93-516 extended authorization of appropriation for fiscal year ending June 30, 1976.

Pub. L. 93-651 amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94-230, set out as a note under section 720 of this title.

§ 776. General grant and contract requirements

(a) Applicability of provisions; compliance with provisions, exceptions

The provisions of this section shall apply to all projects approved and assisted under this subchapter. The Secretary shall insure compliance with this section prior to making any grant or entering into any contract or agreement under this subchapter, except projects authorized under section 772 of this title.

(b) Construction project requirements; assurances; use of funds for intended purposes; report to Congress; plans and specifications; labor standards

To be approved, an application for assistance for a construction project, or for a project which involves construction, under this subchapter must—

(1) contain or be supported by reasonable assurances that (A) for a period of not less than twenty years after completion of construction of the project it will be used as a public or nonprofit facility, (B) sufficient funds will be available to meet the non-Federal share of the cost of construction of the project, and (C) sufficient funds will be available, when construction of the project is completed, for its effective use for its intended purpose;

(2) provide that Federal funds provided to any agency or organization under this subchapter will be used only for the purposes for which provided and in accordance with the applicable provisions of this section and the section under which such funds are provided;

(3) provide that the agency or organization receiving Federal funds under this subchapter will make an annual report to the Secretary, which he shall summarize and comment upon in the annual report to the Congress submitted under section 784 of this title;

(4) be accompanied or supplemented by plans and specifications which have been approved by the Board established by section 792 of this title, in which due consideration shall be given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project), and which comply with regulations prescribed by the Secretary related to minimum standards of construction and equipment (promulgated with particular emphasis on securing compliance with the requirements of the Architectural Barriers Act of 1968 (P.L. 90-480) [42 U.S.C. 4151 et seq.]), and with regulations of the Secretary of Labor relating to occupational health and safety standards for rehabilitation facilities; and

(5) contain or be supported by reasonable assurance that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction

aided by payments pursuant to any grant under this section will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with Davis-Bacon Act, as amended (40 U.S.C. 276a–276a-5); and the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 276c of title 40.

(c) Reservation of grant funds; additional payments

Upon approval of any application for a grant or contract for a project under this subchapter, the Secretary shall reserve, from any appropriation available therefore, the amount of such grant or contract determined under this subchapter. In case an amendment to an approved application is approved, or the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the appropriation from which the original reservation was made or the appropriation for the fiscal year in which such amendment or revision is approved.

(d) Recovery of Federal share upon cessation of public or nonprofit character of facilities

If, within twenty years after completion of any construction project for which funds have been paid under this subchapter, the facility shall cease to be a public or nonprofit facility, the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the then value (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated) of the facility, as the amount of the Federal participation bore to the cost of construction of such facility.

(e) Payments; adjustments for overpayments or underpayments; advances; reimbursement; installments; conditions

Payment of assistance or reservation of funds made pursuant to this subchapter may be made (after necessary adjustment on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine.

(f) Workshops; residential accommodations

A project for construction of a rehabilitation facility which is primarily a workshop may, where approved by the Secretary as necessary to the effective operation of the facility, include such construction as may be necessary to provide residential accommodations for use in connection with the rehabilitation of handicapped individuals.

(g) Sectarian activities; funds prohibition

No funds provided under this subchapter may be used to assist in the construction of any facility which is or will be used for religious worship or any sectarian activity.

(h) Execution of direct services to handicapped individuals

When in any State, funds provided under this subchapter will be used for providing direct services to handicapped individuals or for establishing facilities which will provide such services, such services must be carried out in a manner not inconsistent with the State plan approved pursuant to section 721 of this title.

(i) State agency commentary on grant or contract.

Prior to making any grant or entering into any contract under this subchapter, the Secretary shall afford reasonable opportunity to the appropriate State agency or agencies designated pursuant to section 721 of this title to comment on such grant or contract.

(Pub. L. 93–112, title III, § 306, Sept. 26, 1973, 87 Stat. 384; Pub. L. 93–516, title I, § 111(*l*), Dec. 7, 1974, 88 Stat. 1621; Pub. L. 93–651, title I, § 111(*l*), Nov. 21, 1974, 89 Stat. 2–6.)

REFERENCES IN TEXT

The Architectural Barriers Act of 1968, referred to in subsec. (b)(4), is Pub. L. 90–480, Aug. 12, 1968, 82 Stat. 718, as amended, which is classified generally to chapter 51 (§ 4151 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4151 of Title 42 and Tables volume.

The Davis-Bacon Act, as amended, referred to in subsec. (b)(5), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables volume.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (b)(5), is Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

For history of Pub. L. 93–651, which enacted amendments identical to Pub. L. 93–516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in sections 34, 41a, 41b, 42–1, and 42a of this title.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–516, in provisions preceding par. (1), substituted "a construction project, or for a project which involves construction, under" for "a construction project under", and in par. (4), substituted "plans and specifications which have been approved by the Board established by section 792 of this title, in which" for "plans and specifications in which".

Pub. L. 93–651 amended subsec. (b) in exactly the same manner as it was amended by Pub. L. 93–516.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 721, 762, 771, 773, 774, 775 of this title.

SUBCHAPTER IV—ADMINISTRATION AND PROGRAM AND PROJECT EVALUATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 702, 706 of this title.

§ 780. Administration

(a) Technical assistance to States; short-term traineeships; limitation of training or instruction period; specialized fields; information dissemination; promotion of rehabilitation and employment of handicapped individuals

In carrying out his duties under this chapter, the Secretary shall—

(1) cooperate with, and render technical assistance (directly or by grant or contract) to States in matters relating to the rehabilitation of handicapped individuals;

(2) provide short-term training and instruction in technical matters relating to vocational rehabilitation services, including the establishment and maintenance of such research fellowships and traineeships, with such stipends and allowances (including travel and subsistence expenses), as he may deem necessary, except that no such training or instruction (or fellowship or scholarship) shall be provided any individual for any one course of study for a period in excess of four years, and such training, instruction, fellowships, and traineeships may be in the fields of rehabilitation medicine, rehabilitation nursing, rehabilitation counseling, rehabilitation social work, rehabilitation psychology, physical therapy, occupational therapy, speech pathology and audiology, prosthetics and orthotics, recreation for ill and handicapped individuals, and other specialized fields contributing to the rehabilitation of handicapped individuals; and

(3) disseminate informatin relating to vocational rehabilitation services, and otherwise promote the cause of the rehabilitation of handicapped individuals and their greater utilization in gainful and suitable employment.

(b) Rules and regulations; publication in Federal Register; delegation of powers and duties

The Secretary is authorized to make rules and regulations governing the administration of this subchapter and subchapters I through III of this chapter, and, except as otherwise provided in this chapter, to delegate to any officer or employee of the United States such of his powers and duties under such subchapters, except the making of rules and regulations, as he finds necessary to carry out the provisions of such subchapters. Such rules and regulations shall be published in the Federal Register, on at least an interim basis, no later than ninety days after September 26, 1973.

(c) Investigative authority of Secretary

The Secretary is authorized (directly or by grants or contracts) to conduct studies, investigations, and evaluation of the programs authorized by this chapter, and to make reports, with respect to abilities, aptitudes, and capacities of handicapped individuals, development of their potentialities, their utilization in gainful and suitable employment, and with respect to architectural, transportation, and other environmental and attitudinal barriers to their rehabilitation, including the problems of homebound, institutionalized, and older blind individuals.

(d) Department of Health, Education, and Welfare appropriation; inclusion of sums for administration of chapter

There is authorized to be included for each fiscal year in the appropriation for the Department of Health, Education, and Welfare such sums as are necessary to administer the provisions of this chapter.

(e) Disabled veterans; program coordination

In carrying out his duties under this chapter, the Secretary shall insure the maximum coordination and consultation, at both national and local levels, with the Administrator of Veterans' Affairs and his designees with respect to programs for and relating to the rehabilitation of disabled veterans carried out under title 38.

(Pub. L. 93-112, title IV, § 400, Sept. 26, 1973, 87 Stat. 385.)

PRIOR PROVISIONS

Prior similar provisions were set out in sections 37, 40, and 41a of this title.

§ 781. Program and project evaluation

(a) Statement of purpose; persons eligible for conducting evaluations; duties of Secretary; reports to Congressional committees

(1) The Secretary shall measure and evaluate the impact of all programs authorized by this chapter, in order to determine their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated.

(2) In carrying out his responsibilities under this subsection, the Secretary, in the case of research, demonstrations, and related activities carried out under section 762 of this title, shall, after taking into consideration the views of State agencies designated pursuant to section 721 of this title, on an annual basis—

(A) reassess priorities to which such activities should be directed; and

(B) review present research, demonstration, and related activities to determine, in terms of the purpose specified for such activities by subsection (a) of section 762 of this title, whether and on what basis such activities should be continued, revised, or terminated.

(3) The Secretary shall, within 12 months after September 26, 1973, and on each April 1 thereafter, prepare and furnish to the appropriate committees of the Congress a complete report on the determination and review carried out under paragraph (2) of this subsection, together with such recommendations, including any recommendations for additional legislation, as he deems appropriate.

(b) General evaluation standards; development and publication; renewal or supplementation of financial assistance; description in reports of action taken

Effective July 1, 1974, before funds for the programs and projects covered by this chapter

are released, the Secretary shall develop and publish general standards for evaluation of the programs and project effectiveness in achieving the objectives of this chapter. He shall consider the extent to which such standards have been met in deciding, in accordance with procedures set forth in subsection (b), (c), and (d) of section 721 of this title, whether to renew or supplement financial assistance authorized under any section of this chapter. Reports submitted pursuant to section 784 of this title shall describe the actions taken as a result of these evaluations.

(c) Program participants' views

In carrying out evaluations under this subchapter, the Secretary shall, whenever possible, arrange to obtain the specific views of persons participating in and served by programs and projects assisted under this chapter about such programs and projects.

(d) Evaluative research results and summaries; publication; transmittal to Congressional committees

The Secretary shall publish the results of evaluative research and summaries of evaluations of program and project impact and effectiveness no later than ninety days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such research studies and evaluation summaries.

(e) Property of United States

The Secretary shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with assistance under this chapter shall become the property of the United States.

(Pub. L. 93-112, title IV, § 401, Sept. 26, 1973, 87 Stat. 386.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 721 of this title.

§ 782. Obtaining information from Federal agencies

Such information as the Secretary may deem necessary for purposes of the evaluations conducted under this subchapter shall be made available to him, upon request, by the agencies of the executive branch.

(Pub. L. 93-112, title IV, § 402, Sept. 26, 1973, 87 Stat. 387.)

§ 783. Authorization of appropriations

There is authorized to be appropriated for the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, September 30, 1977, and September 30, 1978, such sums as the Secretary may require, but not to exceed an amount equal to one-half of 1 per centum of the funds appropriated under subchapters I, II, and III of this chapter or $1,000,000, whichever is greater, to be available to conduct program and project evaluations as required by this subchapter.

(Pub. L. 93-112, title IV, § 403, Sept. 26, 1973, 87 Stat. 387; Pub. L. 93-516, title I, § 108, Dec. 7, 1974, 88 Stat. 1619; Pub. L. 93-651, title I, § 108, Nov. 21, 1974, 89 Stat. 2-4; Pub. L. 94-230, §§ 8, 11(b)(11), Mar. 15, 1976, 90 Stat. 212, 213.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in section 37 of this title.

AMENDMENTS

1976—Pub. L. 94-230, § 8, extended authorization of appropriation for fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(11), extended authorization of appropriation for fiscal year ending Sept. 30, 1978.

1974—Pub. L. 93-516 extended authorization of appropriation for fiscal year ending June 30, 1976.

Pub. L. 93-651 amended text in exactly the same manner as it was amended by Pub. L. 93-516.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94-230, set out as a note under section 720 of this title.

§ 784. Reports to President and Congress; contents: statistical data, specific distinguishment of services, and detailed evaluation of subchapter I services

Not later than one hundred and twenty days after the close of each fiscal year, the Secretary shall prepare and submit to the President and to the Congress a full and complete report on the activities carried out under this chapter. Such annual reports shall include (1) statistical data reflecting, with the maximum feasible detail vocational rehabilitation services provided handicapped individuals during the preceding fiscal year, (2) specifically distinguish among rehabilitation closures attributable to physical restoration, placement in competitive employment, extended or terminal employment in a sheltered workshop or rehabilitation facility, employment as a homemaker or unpaid family worker, and provision of other services, and (3) include a detailed evaluation of services provided with assistance under subchapter I of this chapter, especially services to those with the most severe handicaps.

(Pub. L. 93-112, title IV, § 404, Sept. 26, 1973, 87 Stat. 387.)

PRIOR PROVISIONS

Prior similar provisions were set out in section 39 of this title.

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED PART OF FISCAL YEAR BEGINNING OCTOBER 1, 1976

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed part of fiscal year beginning Oct. 1, 1976, for purposes of this section, see section 205(11) of Pub. L. 94-274, set out as a note under section 5532 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 764, 776, 781, 785 of this title.

§ 785. Secretarial responsibilities

(a) Comprehensive services, long-range projection: submittal to Congress; analysis of program operation; coordinated and cooperative planning; utilization of engineering and other scientific research in described areas; information clearinghouse

It shall be the function of the Secretary, with the assistance of agencies within the Department, other departments and agencies within the Federal Government, handicapped individuals, and public and private agencies and organizations, through the Office of the Secretary, to—

(1) prepare for submission to the Congress within eighteen months after September 26, 1973, a long-range projection for the provision of comprehensive services to handicapped individuals and for programs of research, evaluation, and training related to such services and individuals;

(2) analyze on a continuing basis and include in his report submitted under section 784 of this title, a report on the results of such analysis, program operation to determine consistency with applicable provisions of law, progress toward meeting the goals and priorities set forth in the projection required under clause (1), and the effectiveness of all programs providing services to handicapped individuals, and the elimination of unnecessary duplication and overlap in such programs under the jurisdiction of the Secretary;

(3) encourage coordinated and cooperative planning designed to produce maximum effectiveness, sensitivity, and continuity in the provision of services for handicapped individuals by all programs;

(4) develop means of promoting the prompt utilization of engineering and other scientific research to assist in solving problems in education (including promotion of the development of curriculums stressing barrier free design and the adoption of such curriculums by schools of architecture, design, and engineering), health, employment, rehabilitation, architectural, housing, and transportation barriers, and other areas so as to bring about full integration of handicapped individuals into all aspects of society;

(5) provide a central clearinghouse for information and resource availability for handicapped individuals through (A) the evaluation of systems within the Department of Health, Education, and Welfare, other departments and agencies of the Federal Government, public and private agencies and organizations, and other sources, which provide (i) information and data regarding the location, provision, and availability of services and programs for handicapped individuals, regarding research and recent medical and scientific developments bearing on handicapping conditions (and their prevention, amelioration, causes, and cures), and regarding the current numbers of handicapped individuals and their needs, and (ii) any other such relevant information and data which the Secretary deems necessary; and (B) utilizing the results of such evaluation and existing information systems, the development within such Department of a coordinated system of information and data retrieval, which will have the capacity and responsibility to provide general and specific information regarding the information and data referred to in subclause (A) of this clause to the Congress, public and private agencies and organizations, handicapped individuals and their families, professionals in fields serving such individuals, and the general public.

(b) Personnel selection

In selecting personnel to assist in the performance of the functions assigned in subsection (a) of this section, the Secretary shall give special emphasis to qualified handicapped individuals.

(c) Delegation of functions restriction; Office for Handicapped Individuals in office of appropriate Assistant Secretary; establishment

The functions assigned to the Secretary by this section shall not be delegated to any persons not assigned to and operating in the Office of the Secretary, except that he may establish an Office for Handicapped Individuals in the office of an appropriate Assistant Secretary of the Department of Health, Education, and Welfare to carry out such functions. In no event shall any functions under this section be further delegated to any persons with operational responsibilities for carrying out functions authorized under any other section of this chapter or under any other provision of law designed to benefit handicapped individuals.

(d) Authorization of appropriations

There are authorized to be appropriated for carrying out this section $500,000 each for the fiscal years ending June 30, 1974, and June 30, 1975, $600,000 for the fiscal year ending June 30, 1976, and $600,000 for the fiscal years ending September 30, 1977, and September 30, 1978.

(e) Funds, availability; notification of Congressional committees

Not later than thirty days after the appropriation Act containing sums for carrying out the provisions of this chapter is enacted for each fiscal year, the Secretary shall set aside out of sums available to carry out this section or otherwise available pursuant to any other Act, an amount which he determines is necessary and appropriate to enable him to carry out the provisions of this section and shall notify the appropriate committees of the Congress of the amount so set aside, the number of personnel necessary for such purpose, and the basis for his determination under this subsection and his reasons therefor.

(Pub. L. 93-112, title IV, § 405, Sept. 26, 1973, 87 Stat. 338; Pub. L. 93-516, title I, §§ 109, 111(m), Dec. 7, 1974, 88 Stat. 1619, 1621; Pub. L. 93-651, title I, §§ 109, 111(m), Nov. 21, 1974, 89 Stat. 2-4, 2-6; Pub. L. 94-230, §§ 9, 11(b)(12), Mar. 15, 1976, 90 Stat. 212, 213.)

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were set out in section 37 of this title.

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-230, § 9, extended authorization of appropriation of $600,000 for the fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(12), extended authorization of appropriation of $600,000 for the fiscal year ending Sept. 30, 1978.

1974—Subsec. (c). Pub. L. 93-516, § 111(m)(1), (2), substituted "Office for Handicapped Individuals" for "Office for the Handicapped", and added provisions relating to the nondelegability of functions under this section.

Pub. L. 93-651, § 111(m)(1), (2), amended subsec. (c) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (d). Pub. L. 93-516, § 109, authorized appropriation of $600,000 for fiscal year ending June 30, 1976.

Pub. L. 93-651, § 109, amended subsec. (d) in exactly the same manner as it was amended by Pub. L. 93-516.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94-230, set out as a note under section 720 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 sections 1904, 4101.

§ 786. Sheltered workshop study

(a) Original study; wage payments; guidelines

The Secretary shall conduct an original study of the role of sheltered workshops in the rehabilitation and employment of handicapped individuals, including a study of wage payments in sheltered workshops. The study shall incorporate guidelines which are consistent with criteria provided in resolutions adopted by the Committee on Human Resources of the United States Senate or the Committee on Education and Labor of the United States House of Representatives, or both.

(b) Site visits; interviews; consultations

The study shall include site visits to sheltered workshops, interviews with handicapped trainees or clients, and consultations with interested individuals and groups and State agencies designated pursuant to section 721 of this title.

(c) Conflict of interests

Any contracts awarded for the purpose of carrying out all or part of this study shall not be made with individuals or groups with a financial or other direct interest in sheltered workshops.

(d) Report to Congress

The Secretary shall report to the Congress his findings and recommendations with respect to such study within twenty-four months after September 26, 1973.

(Pub. L. 93-112, title IV, § 406, Sept. 26, 1973, 87 Stat. 389; S. Res. 4, Feb. 4, 1977.)

CHANGE OF NAME

The Committee on Labor and Public Welfare of the Senate was abolished and replaced by the Committee on Human Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

§ 787. State allocation study; report to Congress

(a) The Secretary shall conduct a thorough study of the allotment of funds among the States for grants for basic vocational rehabilitation services authorized under part B of subchapter I of this chapter, including a consideration of—

(1) the needs of individuals requiring vocational rehabilitation services;

(2) the financial capability of the States to furnish vocational rehabilitation assistance including, on a State-by-State basis, per capita income, per capita costs of services rendered, State tax rates, and the ability and willingness of a State to provide the non-Federal share of the costs of rendering such services;

(3) the continuing demand upon the State to furnish vocational rehabilitation services, together with a consideration of the factor that no State would receive less Federal financial assistance under such part than it received under section 2 of the Vocational Rehabilitation Act in the fiscal year immediately prior to the enactment of this chapter.

(b) Not later than June 30, 1974, the Secretary shall report to the Congress his findings and recommendations, including recommendations for additional legislation, with respect to the study required by this section, which report shall include recommendations with respect to allotment of Federal funds among the States and the Federal share of the cost of furnishing vocational rehabilitation services by the States.

(Pub. L. 93-112, title IV, § 407, Sept. 26, 1973, 87 Stat. 389.)

REFERENCES IN TEXT

Section 2 of Vocational Rehabilitation Act, referred to in subsec. (a)(3), is section 2 of act June 2, 1920, ch. 219, 41 Stat. 735, as amended, which provided for grants to States for vocational rehabilitation services, including computation of allotments, amount of payments, adjusted Federal shares, and private contributions for construction or establishment of facilities, and which was classified to section 32 of this title. Section 32 was repealed by section 500(a) of Pub. L. 93-112, effective 90 days after Sept. 26, 1973, and is now covered by sections 724, 730, and 731 of this title. See section 790 of this title.

SUBCHAPTER V—MISCELLANEOUS PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 702, 706 of this title.

§ 790. Existing law affected; references in other provisions; availability of unexpended appropriations; savings provision; extension of appropriations

(a) The Vocational Rehabilitation Act is repealed ninety days after September 26, 1973, and references to such Vocational Rehabilitation Act in any other provision of law shall, ninety days after such date, be deemed to be references to the Rehabilitation Act of 1973. Unexpended appropriations for carrying out the Vocational Rehabilitation Act may be made available to carry out this chapter, as directed

by the President. Approved State plans for vocational rehabilitation, approved projects, and contractual arrangements authorized under the Vocational Rehabilitation Act will be recognized under comparable provisions of this chapter so that there is no disruption of ongoing activities for which there is continuing authority.

(b) The authorizations of appropriations in the Vocational Rehabilitation Act are hereby extended at the level specified for the fiscal year 1972 for the fiscal year 1973.

(Pub. L. 93-112, title V, § 500, Sept. 26, 1973, 87 Stat. 390.)

REFERENCES IN TEXT

Vocational Rehabilitation Act, referred to in text, is act June 2, 1920, ch. 219, 41 Stat. 735, which was classified generally to chapter 4 (§ 31 et seq.) of this title. For complete classification of this Act to the Code, see Tables Volume.

The Rehabilitation Act of 1973, referred to in subsec. (a), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, which is classified generally to this chapter (§ 701 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables volume.

DELEGATION OF AUTHORITY OF THE PRESIDENT

For the designation and empowering of the Director of the Office of Management and Budget to exercise, without approval, ratification, or any other action of the President, the authority of the President under subsec. (a) of this section with respect to the transfer of unexpended appropriations, see Ex. Ord. No. 11758, Jan. 15, 1974, 39 F.R. 2075, as amended, set out under section 701 of this title.

§ 791. Employment of handicapped individuals

(a) Interagency Committee on Handicapped Employees; establishment; membership; co-chairmen; availability of other Committee resources; purpose and functions

There is established within the Federal Government an Interagency Committee on Handicapped Employees (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman of the Civil Service Commission, the Administrator of Veterans' Affairs, and the Secretaries of Labor and Health, Education, and Welfare. The Secretary of Health, Education, and Welfare and the Chairman of the Civil Service Commission shall serve as co-chairmen of the Committee. The resources of the President's Committees on Employment of the Handicapped and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of handicapped individuals, and to review, on a periodic basis, in cooperation with the Civil Service Commission, the adequacy of hiring, placement, and advancement practices with respect to handicapped individuals, by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and (2) to consult with the Civil Service Commission to assist the Commission to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Civil Service Commission such recommendations for legislative and administrative changes as it deems necessary or desirable. The Civil Service Commission shall timely transmit to the appropriate committees of Congress any such recommendations.

(b) Federal agencies; affirmative action program plans

Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after September 26, 1973, submit to the Civil Service Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of handicapped employees are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for handicapped individuals.

(c) State agencies; rehabilitated individuals, employment

The Civil Service Commission, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for handicapped individuals, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

(d) Report to Congressional committees

The Civil Service Commission, after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of handicapped individuals by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Civil Service Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the Civil Service Commission's activities under subsections (b) and (c) of this section.

(e) Federal work experience without pay; non-Federal status

An individual who, as a part of his individualized written rehabilitation program under a

State plan approved under this chapter, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(f) Federal agency cooperation; special consideration for positions on President's Committee on Employment of the Handicapped

(1) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized and directed to cooperate with the President's Committee on Employment of the Handicapped in carrying out its functions.

(2) In selecting personnel to fill all positions on the President's Committee on Employment of the Handicapped, special consideration shall be given to qualified handicapped individuals.

(Pub. L. 93-112, title V, § 501, Sept. 26, 1973, 87 Stat. 390.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (a), is set out in section 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Prior similar provisions were set out in section 38 of this title.

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED PART OF FISCAL YEAR BEGINNING OCTOBER 1, 1976

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed part of fiscal year beginning Oct. 1, 1976, for purposes of subsec. (d) of this section, see section 205(11) of Pub. L. 94-274, set out as a note under section 5532 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER No. 10640

Ex. Ord. No. 10640, Oct. 10, 1955, 20 F.R. 7717, formerly set out as a note under section 39 of this title, which related to President's Committee on Employment of the Physically Handicapped, was superseded by section 6(a) of Ex. Ord. No. 10994, Feb. 14, 1962, 27 F.R. 1447, which established President's Committee on Employment of the Handicapped.

EXECUTIVE ORDER No. 10994

Ex. Ord. No. 10994, Feb. 14, 1962, 27 F.R. 1447, as amended by Ex. Ord. No. 11018, Apr. 27, 1962, 27 F.R. 4143, which established the President's Committee on Employment of the Handicapped, was superseded by Ex. Ord. No. 11480, Sept. 9, 1969, 34 F.R. 14273, set out as a note below.

EX. ORD. NO. 11480. PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED

Ex. Ord. No. 11480, Sept. 9, 1969, 34 F.R. 14273, provided:

By virtue of the authority vested in me as President of the United States, and in order to provide for the carrying out of the provisions of the Joint Resolution approved July 11, 1949, ch. 302, 63 Stat. 409, as amended, and the provisions of section 8 of the Vocational Rehabilitation Act, as amended (29 U.S.C. 38), it is ordered as follows:

SECTION 1. *Establishment and composition of the President's Committee.* (a) There is hereby established the President's Committee on Employment of the Handicapped (hereinafter referred to as the Committee or as the President's Committee).

(b) The Committee shall be composed of a Chairman and not more than four Vice Chairmen, who shall be appointed by and serve at the pleasure of the President, and of so many other members as may be appointed thereto from time to time by the Chairman of the President's Committee from among persons (including representatives of organizations) who can contribute to the achievement of the objectives of the Committee. Members appointed by the Chairman shall be appointed for a term of three years and may be reappointed. The Chairman of the President's Committee may at any time terminate the service of any member of the President's Committee, except any member appointed by the President.

(c) The Chairman of the President's Committee, upon the advice of the Executive Committee (hereinafter provided for), may designate as, or invite to be, associate members of the President's Committee any heads of Federal departments and agencies which have responsibility for rehabilitation services or promotional activities touching the field of interest of the Committee or which are leading employers of handicapped personnel.

(d) Representatives of industry, labor, public and private agencies, and other concerned organizations and individuals may be invited to attend meetings of the Committee.

SEC. 2. *Functions of the Committee.* The President's Committee shall facilitate the development of maximum employment opportunities for the physically handicapped, mentally retarded, and mentally restored. To this end the Committee shall supply information to employers, labor unions, and national and international organizations, conduct a program of public education, promote cooperation between organizations and agencies, and enlist the support of Federal officials, State and local officials, Governors' and local Committees on Employment of the Handicapped, professional organizations, organized labor, and appropriate international organizations. In carrying out the functions vested in it by section 8 of the Vocational Rehabilitation Act, as amended, the Committee shall work closely with the Department of Labor, Department of Health, Education, and Welfare, the Veterans Administration, State employment-security agencies, and State vocational rehabilitation agencies.

SEC. 3. *Executive Committee.* (a) There is hereby established the Executive Committee of the President's Committee on Employment of the Handicapped. The Executive Committee shall be composed of the Chairman of the President's Committee, who shall also be the Chairman of the Executive Committee, the Vice Chairmen of the President's Committee, and so many additional members as will provide an Executive Committee of not less than fifteen and not more than fifty members. The said additional members shall be appointed annually by the Chairman of the President's Committee, from among the members of the President's Committee or otherwise. The Chairman of the President's Committee may at any time terminate the service of any member of the Executive Committee.

(b) The Executive Committee shall advise and assist the Chairman of the President's Committee in the conduct of the business of the President's Committee and, as authorized by the President's Committee or the Chairman thereof (with due regard for the responsibilities of other Federal agencies), shall study the problems of the handicapped in obtaining and retaining suitable employment, invite authorities in the various professional, technical, and other pertinent fields to assist in the exploration of those problems, and review and develop plans and projects for promoting the employment of the handicapped.

SEC. 4. *Advisory Council.* There is hereby established the Advisory Council on Employment of the Handicapped, which shall advise the President's Committee with respect to the responsibilities of the Committee. The Council shall be composed of the Chairman of the President's Committee, who shall also be the Chairman of the Council, and of the following-named officers, or their respective alternatives: The Secretary

of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of Veterans' Affairs, and the Chairman of the United States Civil Service Commission.

SEC. 5. *Administrative and incidental matters.* (a) The President's Committee, the Executive Committee, and the Advisory Council shall each meet on call of the Chairman of the President's Committee at a time and place designated by him. In the case of the President's Committee and the Executive Committee, the Chairman shall call at least one meeting and two meetings, respectively, to be held during each calendar year.

(b) In the absence of designation by the President, the Chairman of the President's Committee may from time to time designate a Vice Chairman of the President's Committee to be one or more of the following-named in the absence of the Chairman: Acting Chairman of the President's Committee, Acting Chairman of the Executive Committee, and Acting Chairman of the Advisory Council. The Chairman of the President's Committee shall from time to time assign other duties to the Vice Chairman thereof.

(c) The Chairman of the President's Committee shall on behalf of the President direct the President's Committee and its functions.

(d) The Chairman may from time to time prescribe such necessary rules, procedures, and policies relating to the President's Committee, the Executive Committee, and the Advisory Council, and their affairs, as are not inconsistent with law or with the provisions of this order.

(e) The Vice Chairmen shall advise and counsel the Committee and shall represent the Committee on appropriate occasions.

(f) All members (including the Chairman and Vice Chairmen) of the President's Committee, the Executive Committee, and the Advisory Council shall serve without compensation. The Chairman and the Vice Chairmen of the President's Committee may receive transportation and per diem allowances as authorized by law for persons serving without compensation.

(g) Employees of the President's Committee shall be appointed, subject to law, and shall be directed, by the Chairman of the Committee. To such extent as may be mutually arranged by the Chairman of the Committee and the Secretary of Labor, employees of the Committee shall be subject to the administrative rules, regulations, and procedures of the Department of Labor.

(h) The Department of Labor is requested to make available to the President's Committee necessary office space and to furnish the Committee, under such arrangements respecting financing as may be appropriate, necessary equipment, supplies, and services. The estimates of appropriations for the operations of the Committee shall be included within the framework of the appropriation structure of the Department of Labor, in such manner as the Director of the Bureau of the Budget may prescribe. The Chairman of the Committee, in cooperation with the Assistant Secretary for Administration of the Department of Labor, shall be responsible for the preparation and justification of the estimates of appropriations for the Committee.

SEC. 6. *Prior orders; transitions.* (a) To the extent that this order is inconsistent with any provision of any prior order, or with any provision of any regulation or other measure or disposition, heretofore issued, made, or taken by the President or by any other officer of the executive branch of the Government, this order shall control. Executive Order No. 10994 of February 14, 1962, and Executive Order No. 11018 of April 27, 1962, are hereby superseded.

(b) Without further action by the President or the Chairman of the Committee, all members, employees, records, property, funds, and pending business of the President's Committee on Employment of the Handicapped provided for in Executive Order No. 10994 of February 14, 1962, as amended, shall on the date of this order become members, employees, records, property, funds and pending business of the Committee established by this order.

(c) The tenure of persons as members of the Committee in pursuance of the provisions of section 6(b) of this order, (i), in the case of persons appointed to the predecessor Committee by the President, shall be at the pleasure of the President, and (ii), in the case of other members, shall be for periods equal to their respective unexpired terms under Executive Order No. 10994, as amended, but shall also be subject to the provisions of the last sentence of section 1(b) of this order.

RICHARD NIXON.

EX. ORD. NO. 11830. ENLARGING MEMBERSHIP OF INTERAGENCY COMMITTEE ON HANDICAPPED EMPLOYEES

Ex. Ord. No. 11830, Jan. 9, 1975, 40 F.R. 2411, provided:

By virtue of the authority vested in me by section 501(a) of the Rehabilitation Act of 1973 (Public Law 93-112; 87 Stat. 390) [subsec. (a) of this section], it is hereby ordered as follows:

SECTION 1. The Interagency Committee on Handicapped Employees shall be comprised of the following (or their designees whose positions are executive level IV or higher):

(1) The Secretary of Defense.
(2) The Secretary of Labor.
(3) The Secretary of Health, Education, and Welfare.
(4) The Chairman of the Civil Service Commission.
(5) The Administrator of Veterans Affairs.
(6) The Administrator of General Services.
(7) The Chairman of the Federal Communications Commission, and
(8) such other members as the President may, from time to time, designate.

SEC. 2. The Secretary of Health, Education, and Welfare and the Chairman of the Civil Service Commission, under the provisions of section 501(a) of the Rehabilitation Act of 1973 [subsec. (a) of this section], shall serve as Co-chairmen of the Committee.

GERALD R. FORD.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 2014.

§ 792. Architectural and Transportation Barriers Compliance Board

(a) Establishment; membership; chairman; appointment of Consumer Advisory Panel

There is established within the Federal Government the Architectural and Transportation Barriers Compliance Board (hereinafter referred to as the "Board") which shall be composed of the heads of each of the following departments or agencies (or their designees whose positions are Executive Level IV or higher):

(1) Department of Health, Education, and Welfare;
(2) Department of Transportation;
(3) Department of Housing and Urban Development;
(4) Department of Labor;
(5) Department of the Interior;
(6) Department of Defense;
(7) General Services Administration;
(8) United States Postal Service; and
(9) Veterans' Administration.

The Secretary of Health, Education, and Welfare shall be the Chairman of the Board, and the Board shall appoint, upon recommendation of the Secretary, a Consumer Advisory Panel, a majority of the members of which shall be

handicapped individuals, to provide guidance, advice, and recommendations to the Board in carrying out its functions.

(b) Functions

It shall be the function of the Board to: (1) insure compliance with the standards prescribed by the General Services Administration, the Department of Defense, and the Department of Housing and Urban Development pursuant to the Architectural Barriers Act of 1968 (Public Law 94–480), as amended by the Act of March 5, 1970 (Public Law 91–205) [42 U.S.C. 4151 et seq.]; (2) investigate and examine alternative approaches to the architectural, transportation, and attitudinal barriers confronting handicapped individuals, particularly with respect to public buildings and monuments, parks and parklands, public transportation (including air, water, and surface transportation whether interstate, foreign, intrastate, or local), and residential and institutional housing; (3) determine what measures are being taken by Federal, State, and local governments and by other public or nonprofit agencies to eliminate the barriers described in clause (2) of this subsection; (4) promote the use of the International Accessibility Symbol in all public facilities that are in compliance with the standards prescribed by the Administrator of the General Services Administration, the Secretary of Defense, and the Secretary of Housing and Urban Development pursuant to the Architectural Barriers Act of 1968; (5) make to the President and to Congress reports which shall describe in detail the results to its investigations under clauses (2) and (3) of this subsection; and (6) make to the President and to the Congress such recommendations for legislation and administration as it deems necessary or desirable to eliminate the barriers described in clause (2) of this subsection.

(c) Additional functions; transportation barriers and housing needs; transportation and housing plans and proposals

The Board shall also (1)(A) determine how and to what extent transportation barriers impede the mobility of handicapped individuals and aged handicapped individuals and consider ways in which travel expenses in connection with transportation to and from work for handicapped individuals can be met or subsidized when such individuals are unable to use mass transit systems or need special equipment in private transportation, and (B) consider the housing needs of handicapped individuals; (2) determine what measures are being taken, especially by public and other nonprofit agencies and groups having an interest in and a capacity to deal with such problems, (A) to eliminate barriers from public transportation systems (including vehicles used in such systems), and to prevent their incorporation in new or expanded transportation systems and (B) to make housing available and accessible to handicapped individuals or to meet sheltered housing needs; and (3) prepare plans and proposals for such further actions as may be necessary to the goals of adequate transportation and housing for handicapped individuals, including proposals for bringing together in a cooperative effort, agencies, organizations, and groups already working toward such goals or whose cooperation is essential to effective and comprehensive action.

(d) Investigations; hearings; orders; administrative procedure applicable; final orders

In carrying out its functions under this chapter, the Board shall, directly or through grants to or contracts with public or private nonprofit organizations, carry out its functions under subsections (b) and (c) of this section, and shall conduct investigations, hold public hearings, and issue such orders as it deems necessary to insure compliance with the provisions of the Acts cited in subsection (b) of this section. The provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall apply to procedures under this section, and an order of compliance issued by the Board shall be a final order for purposes of judicial review. Any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality. An order of compliance may include the withholding or suspension of Federal funds with respect to any building found not to be in compliance with standards prescribed pursuant to the Acts cited in subsection (b) of this section.

(e) Appointment of executive director, hearing examiners, and other personnel; provisions applicable

There shall be appointed by the Board an executive director and such other professional and clerical personnel as are necessary to carry out its functions under this chapter. The Board is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted under this section. The provisions applicable to hearing examiners appointed under section 3105 of title 5 shall apply to hearing examiners appointed under this subsection.

(f) Technical, administrative, or other assistance; appointment, compensation, and travel expenses of advisory and technical experts and consultants

The departments or agencies specified in subsection (a) of this section shall make available to the Board such technical, administrative, or other assistance as it may require to carry out its functions under this section, and the Board may appoint such other advisers, technical experts, and consultants as it deems necessary to assist it in carrying out its functions under this section. Special advisory and technical experts and consultants appointed pursuant to this subsection shall, while performing their functions under this section, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily pay rate, for a person employed as a GS–18 under section 5332 of title 5, including traveltime, and while serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(g) Reports to Congress; final reports on transportation barriers and housing needs

The Board shall, at the end of each fiscal year, report its activities during the preceding fiscal year to the Congress. Such report shall

include an assessment of the extent of compliance with the Acts cited in subsection (b) of this section, along with a description and analysis of investigations made and actions taken by the Board, and the reports and recommendations described in clauses (5) and (6) of subsection (b) of this section. The Board shall prepare two final reports of its activities under subsection (c) of this section. One such report shall be on its activities in the field of transportation barriers to handicapped individuals, and the other such report shall be on its activities in the field of the housing needs of handicapped individuals. The Board shall, not later than September 30, 1975, submit each such report, together with its recommendations, to the President and the Congress. The Board shall also prepare for such submission an interim report of its activities in each such field within 18 months after September 26, 1973.

(h) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out the duties and functions of the Board under this section $1,000,000 each for the fiscal years ending June 30, 1974, and June 30, 1975, and $1,500,000 for the fiscal year ending June 30, 1976, and $1,500,000 for the fiscal years ending September 30, 1977, and September 30, 1978.

(Pub. L. 93-112, title V, § 502, Sept. 26, 1973, 87 Stat. 391; Pub. L. 93-516, title I, §§ 110, 111(n)-(q), Dec. 7, 1974, 88 Stat. 1619, 1621, 1622; Pub. L. 93-651, title I, §§ 110, 111(n)-(q), Nov. 21, 1974, 89 Stat. 2-4, 2-6, 2-7; Pub. L. 94-230, §§ 10, 11(b)(13), Mar. 13, 1976, 90 Stat. 212, 214.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (a), is set out in section 5315 of Title 5, Government Organization and Employees.

The Architectural Barriers Act of 1968, referred to in subsec. (b), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, which is classified generally to chapter 51 (§ 4151 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4151 of Title 42. Tables volume.

CODIFICATION

Section 5332 of title 5, referred to in subsec. (f), read title "45" in the original and was changed to reflect the Congressional intent made manifest in the subsequent text reading "such title 5".

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

AMENDMENTS

1976—Subsec. (h). Pub. L. 94-230, § 10, authorized appropriation of $1,500,000 for the fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(13), authorized appropriation of $1,500,000 for the fiscal year ending Sept. 30, 1978.

1974—Subsec. (a). Pub. L. 93-516, § 111(n), redesignated cls. (6), (7), and (8), as cls. (7), (8), and (9), added cl. (6), and following the designated clauses, added provisions that the Secretary of Health, Education, and Welfare shall be the Chairman of the Board, and that the Board shall appoint, upon recommendation of the Secretary, a Consumer Advisory Panel, a majority of the members of which shall be handicapped individuals, to provide guidance, advice, and recommendations to the Board in carrying out its functions.

Pub. L. 93-651, § 111(n), amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (d). Pub. L. 93-516, § 111(o), substituted "this chapter, the Board shall, directly or through grants to or contracts with public or private nonprofit organizations, carrying out its functions under subsections (b) and (c) of this section, and shall conduct" for "this section, the Board shall conduct", and added provisions that any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality, and that an order of compliance may include the withholding or suspension of Federal funds with respect to any building found not to be in compliance with standards prescribed pursuant to the Acts referred to in subsec. (b) of this section.

Pub. L. 93-651, 111(o), amended subsec. (d) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (e). Pub. L. 93-516, § 111(p), added provisions relating to the appointment of an executive director and other professional and clerical personnel.

Pub. L. 93-651, § 111(p), amended subsec. (e) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (g). Pub. L. 93-516, § 111(q), substituted "not later than September 30, 1975" for "prior to January 1, 1975".

Pub. L. 93-651, § 111(q), amended subsec. (g) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (h). Pub. L. 93-516, § 110, authorized appropriation of $1,500,000 for fiscal year ending June 30, 1976.

Pub. L. 93-651, § 110, amended subsec. (h) in exactly the same manner as it was amended by Pub. L. 93-516.

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED PART OF FISCAL YEAR BEGINNING OCTOBER 1, 1976

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed part of fiscal year beginning Oct. 1, 1976, for purposes of subsec. (g) of this section, see section 205(11) of Pub. L. 94-274, set out as a note under section 5532 of Title 5, Government Organization and Employees.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94-230, set out as a note under section 720 of this title.

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a panel established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 774, 776 of this title; title 42 section 4157.

§ 793. Employment under Federal contracts

(a) Amount of contracts or subcontracts; provision for employment and advancement of qualified handicapped individuals; regulations

Any contract in excess of $2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 706(6) of this title. The provisions of this section shall apply to any subcontract in excess of $2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after September 26, 1973.

(b) Administrative enforcement; complaints; investigations; departmental action

If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) Waiver by President; national interest special circumstances for waiver of particular agreements

The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which he shall prescribe, when he determines that special circumstances in the national interest so require and states in writing his reasons for such determination.

(Pub. L. 93-112, title V, § 503, Sept. 26, 1973, 87 Stat. 393.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 721 of this title.

§ 794. Nondiscrimination under Federal grants

No otherwise qualified handicapped individual in the United States, as defined in section 706(6) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(Pub. L. 93-112, title V, § 504, Sept. 26, 1973, 87 Stat. 394.)

EX. ORD. NO. 11914. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Ex. Ord. No. 11914, Apr. 28, 1976, 41 F.R. 17871, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including section 301 of title 3 of the United States Code [section 301 of Title 3, The President], and as President of the United States, and in order to provide for consistent implementation within the Federal Government of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) [this section], it is hereby ordered as follows:

Section 1. The Secretary of Health, Education, and Welfare shall coordinate the implementation of section 504 of the Rehabilitation Act of 1973, as amended [this section], hereinafter referred to as section 504 [this section], by all Federal departments and agencies empowered to extend Federal financial assistance to any program or activity. The Secretary shall establish standards for determining who are handicapped individuals and guidelines for determining what are discriminatory practices, within the meaning of section 504 [this section]. The Secretary shall assist Federal departments and agencies to coordinate their programs and activities and shall consult with such departments and agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of section 504 [this section].

Sec. 2. In order to implement the provisions of section 504 [this section], each Federal department and agency empowered to provide Federal financial assistance shall issue rules, regulations, and directives, consistent with the standards and procedures established by the Secretary of Health, Education, and Welfare.

Sec. 3. (a) Whenever the appropriate department or agency determines, upon all the information available to it, that any recipient of, or applicant for, Federal financial assistance is in noncompliance with the requirements adopted pursuant to this order, steps to secure voluntary compliance shall be carried out in accordance with standards and procedures established pursuant to this order.

(b) If voluntary compliance cannot be secured by informal means, compliance with section 504 [this section] may be effected by the suspension or termination of, or refusal to award or continue, Federal financial assistance or by other appropriate means authorized by law, in accordance with standards and procedures established pursuant to this order.

(c) No such suspension or termination of, or refusal to award or continue, Federal financial assistance shall become effective unless there has been an express finding, after opportunity for a hearing, of a failure by the recipient of, or applicant for, Federal financial assistance to comply with the requirements adopted pursuant to this order; however, such suspension or termination of, or refusal to award or continue, Federal financial assistance shall be limited in its effect to the particular program or activity or part thereof with respect to which there has been such a finding of noncompliance.

Sec. 4. Each Federal department and agency shall furnish the Secretary of Health, Education, and Welfare such reports and information as the Secretary requests and shall cooperate with the Secretary in the implementation of section 504 [this section].

Sec. 5. The Secretary of Health, Education, and Welfare may adopt rules and regulations and issue orders which he deems are necessary to carry out his responsibilities under this order. The Secretary shall ensure that such rules, regulations, and orders are not inconsistent with, or duplicative of, other Federal Government policies relating to the handicapped, including those policies adopted in accordance with sections 501, 502, and 503 of the Rehabilitation Act of 1973, as amended [sections 791, 792, and 793 of this title], or the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) [section 4151 et seq. of Title 42, The Public Health and Welfare].

GERALD R. FORD.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 1242.

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 18 section 665; title 20 sections 1211b, 2306, 2307, 2391, 2563; title 38 section 2003; title 42 sections 2982a, 3056a, 6103, 6864.

§ 801. Congressional statement of purpose

It is the purpose of this chapter to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible and decentralized system of Federal, State, and local programs.

(Pub. L. 93-203, § 2, Dec. 28, 1973, 87 Stat. 839.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, this Act, meaning Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, known as the Comprehensive Employment and Training Act of 1973, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables volume.

EFFECTIVE DATE

Section 715, formerly § 615, of Pub. L. 93-203, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, provided that: "This Act [see Short Title note below] shall take effect on the date of its enactment [Dec. 28, 1973]."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-444, § 1, Oct. 1, 1976, 90 Stat. 1476, provided: "That this Act [enacting sections 967 to 969 of this title, amending sections 815, 816, 842, 843, 845, 881, 961 to 963, 965, 966, 981, 982, and 984 of this title, enacting provisions set out as notes under sections 842, 952, and 953 of this title and section 3304 of Title 26, Internal Revenue Code, and amending provisions set out as note under section 2002 of Title 38, Veterans' Benefits] may be cited as the 'Emergency Jobs Programs Extension Act of 1976'."

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-567, § 1, Dec. 31, 1974, 88 Stat. 1845, provided: "That this Act [enacting sections 961 to 966 of this title, and sections 3246 to 3246g of Title 42, The Public Health and Welfare, amending sections 841, 842, 844, 845, 849 to 851, 981, and 983 of this title and section 1244(a) of Title 20, Education, and enacting provisions set out as notes under sections 3304 of Title 26, Internal Revenue Code, and 2002 of Title 38, Veterans' Benefits] may be cited as the 'Emergency Jobs and Unemployment Assistance Act of 1974'."

SHORT TITLE

Section 1 of Pub. L. 93-203 provided: "That this Act [which enacted this chapter and section 665 of Title 18, Crimes and Criminal Procedure, and repealed sections 2571 to 2628, 2716 to 2729, 2737 to 2749, and 2769 to 2769f of Title 42, The Public Health and Welfare] may be cited as the 'Comprehensive Employment and Training Act of 1973'."

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976 DEEMED PART OF FISCAL YEAR BEGINNING ON JULY 1, 1975; EXCEPTION

Pub. L. 94-274, title I, § 117, Apr. 21, 1976, 90 Stat. 389, provided that for the purposes of this chapter, the period of July 1, 1976, through Sept. 30, 1976, was to be treated as part of the fiscal year beginning on July 1, 1975, except that such period was not to be included in such fiscal year for purposes of the percentages specified in section 813(a)(4) and (f) of this title.

TRANSITIONAL PROVISIONS

Section 3 of Pub. L. 93-203 authorized the Secretary to provide financial assistance to job training programs from funds appropriated pursuant to this chapter, in the same manner and on the same conditions as provided in certain predecessor programs, in order to assure the orderly transition of supporting job training programs, and authorized the Secretary, in addition, to provide financial assistance under section 874(a)(3) of this title for jobs for disadvantaged youths during the summer months from appropriations available under this chapter during the period June 1, 1974, through Oct. 1, 1974, in the same manner and on the same conditions.

REPEAL OF PREDECESSOR PROGRAMS; AVAILABILITY OF UNEXPENDED APPROPRIATIONS

Section 714, formerly § 614, of Pub. L. 93-203, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, provided that: "Effective with respect to fiscal years after June 30, 1974, the Manpower Development and Training Act of 1962 [section 2571 et seq. of Title 42, The Public Health and Welfare] and parts A, B, and E of title I of the Economic Opportunity Act of 1964 [sections 2711 to 2729, 2731 to 2749, and 2769 to 2769f of Title 42] are repealed. Unexpended appropriations for carrying out such Acts may be made available to carry out this Act [this chapter], as directed by the President."

§ 802. Authorization of appropriations

(a) There are authorized to be appropriated such sums as may be necessary for the fiscal year ending June 30, 1974, and for each of the three succeeding fiscal years for carrying out the provisions of this chapter.

(b) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds appro-

priated to carry out this chapter which are not obligated prior to the end of the fiscal year for which such funds were appropriated shall remain available for obligation during the succeeding fiscal year, and any funds obligated in any fiscal year may be expended during a period of two years from the date of obligation.

(c)(1) For the purpose of affording adequate notice of funding available under this chapter, appropriations under this chapter are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(2) In order to effect a transition to the advance funding method of timing appropriation action, the provisions of this subsection shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(d)(1) Of the amounts appropriated to carry out this chapter, the Secretary shall reserve and make available not less than $250,000,000 in the fiscal year ending June 30, 1974, and not less than $350,000,000 in the fiscal year ending June 30, 1975, to carry out public service employment programs under subchapter II of this chapter.

(2) In addition to the amounts reserved under paragraph (1) of this subsection, there are authorized to be appropriated and made available for the fiscal years ending June 30, 1974, and June 30, 1975, such sums as may be necessary to carry out public service employment programs under subchapter II of this chapter. There are authorized to be appropriated and made available for the fiscal year ending June 30, 1976, and for the succeeding fiscal year such sums as may be necessary to carry out public service employment programs under subchapter II of this chapter.

(e) Of the amount appropriated to carry out this chapter for any fiscal year, not more than 20 percent of such amount (excluding any amount in excess of $250,000,000 of the amount made available for carrying out subchapter II of this chapter) shall be available for carrying out the provisions of subchapter III and subchapter IV of this chapter.

(Pub. L. 93-203, § 4, Dec. 28, 1973, 87 Stat. 839.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 882 of this title.

SUBCHAPTER I—COMPREHENSIVE MANPOWER SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 844, 850, 871, 874, 917, 962, 963, 981 of this title; title 42 section 2809.

§ 811. Program description

It is the purpose of this subchapter to establish a program to provide comprehensive manpower services throughout the Nation. Such program shall include the development and creation of job opportunities and the training, education, and other services needed to enable individuals to secure and retain employment at their maximum capacity. Comprehensive manpower services may include, but shall not be limited to, programs and activities designed to carry out the purpose of this subchapter, such as—

(1) outreach to make persons aware of the availability of manpower services and persuade them to use such services,

(2) assessment of the individual's needs, interests, and potential in the labor market and referral to appropriate employment, training, or other opportunities,

(3) orientation, counseling, education, and institutional skill training to prepare the individual to enter the labor market or to qualify for more productive job opportunities,

(4) training on the job,

(5) payments or other inducements to public or private employers to expand job opportunities, but payments to employers organized for profit shall not exceed the difference between the costs of recruiting, training, and providing supportive services for low-income persons and those regularly employed,

(6) services to individuals to enable them to retain employment,

(7) payment of allowances to persons in training for which they receive no remuneration and payment of such allowances for transportation, subsistence, or other expenses incurred in participating in manpower services or employment as are necessary to enable the individual to participate therein,

(8) supportive services to enable individuals to take advantage of employment opportunities, including necessary health care and medical services, child care, residential support, assistance, in securing bonds, or any other necessary assistance incident to employment, and any other service needed to participate in employment or manpower services,

(9) development of information concerning the labor market and activities, such as job restructuring, to make it more responsive to objectives of the manpower services program,

(10) manpower training, employment opportunities, and related services conducted by community-based organizations,

(11) transitional public service employment programs, and

(12) any programs authorized by part A of subchapter III of this chapter and by subchapter IV of this chapter.

(Pub. L. 93-203, title I, § 101, Dec. 28, 1973, 87 Stat. 840.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 983 of this title.

§ 812. Prime sponsor

(a) Financial assistance; qualifications of sponsorship

The Secretary may make financial assistance available to a prime sponsor to enable it to carry out all or a substantial part of a comprehensive manpower program. A prime sponsor shall be—

(1) a State;

(2) a unit of general local government which has a population of one hundred thou-

sand or more persons on the basis of the most satisfactory current data available to the Secretary;

(3) any combination of units of general local government which includes any unit of general local government qualifying under paragraph (2) of this subsection;

(4) any unit of general local government or any combination of such units, without regard to population, which, in exceptional circumstances, is determined by the Secretary of Labor—

(A)(i) to serve a substantial portion of a functioning labor market area, or (ii) to be a rural area having a high level of unemployment; and

(B) to have demonstrated (i) that it has the capability for adequately carrying out programs under this chapter, and (ii) that there is a special need for services within the area to be served, and (iii) that it will carry out such programs and services in such area as effectively as the State; or

(5) a limited number of existing concentrated employment program grantees serving rural areas having a high level of unemployment which the Secretary determines have demonstrated special capabilities for carrying out programs in such areas and are designated by him for that purpose.

(b) States; units of local government

(1) A State shall not qualify as a prime sponsor for any geographical area within the jurisdiction of any prime sponsor described in paragraph (2), (3), (4), or (5) of subsection (a) of this section unless such prime sponsor has not submitted an approvable comprehensive manpower plan for such area.

(2) A unit of general local government shall not qualify as a prime sponsor with respect to any area within the jurisdiction of another eligible unit of general local government unless such smaller unit has not submitted an approvable comprehensive manpower plan for such area.

(c) Notice of intent; consent

(1) To be eligible for prime sponsorship for any fiscal year, an otherwise eligible applicant must submit to the Secretary a notice of intent to apply for prime sponsorship by such date as the Secretary shall prescribe.

(2) The Secretary may not, prior to March 1, 1974, designate as a prime sponsor, any State or unit of general local government containing another unit of general local government meeting the requirements of subsection (a)(2) of this section unless such smaller unit has submitted to the Secretary written consent for such designation.

(Pub. L. 93-203, title I, § 102, Dec. 28, 1973, 87 Stat. 841.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 813, 816, 817, 820, 844, 963, 964 of this title.

§ 813. Allocation of funds

(a) Percentage of allotments

(1) Eighty percent of the amount available for this subchapter in any fiscal year shall be allotted in accordance with the provisions of this subsection.

(2) Subject to the provisions of paragraph (4)—

(A) 50 percent of the amount allotted under this subsection shall be allotted on the basis of the manpower allotment of the State in the fiscal year prior to the year for which the determination is made compared to the manpower allotment for all States in that year;

(B) 37½ percent of the amount allotted under this subsection shall be allotted on the basis of the relative number of unemployed persons within the State as compared to such numbers in all States;

(C) 12½ percent of the amount allotted under this subsection shall be allotted on the basis of the relative number of adults in families with an annual income below the low-income level within the State compared to such total numbers in all States;

(D) Not less than $2,000,000 shall be allotted among Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, in accordance with their respective needs.

(3) The sum allotted to each State shall be allotted by the Secretary among areas within the State on an equitable basis based upon the factors set forth in paragraph (2).

(4) No prime sponsor shall be allocated an amount which is in excess of 150 percent of the amount received by the area served by that prime sponsor in the fiscal year immediately preceding the fiscal year for which the determination was made except that if the amount so allocated is less than 50 percent of the amount to which such prime sponsor is entitled under paragraph (2) in the fiscal year for which a determination was made, then such allocation shall be increased to 50 percent of the amount of such entitlement.

(b) Encouragement of voluntary combinations

Not more than 5 percent of the amount available for this subchapter shall be available to the Secretary to encourage, after consultation with and receiving recommendations from the Governor of the appropriate State, voluntary combinations formed under section 812(a)(3) of this title.

(c) Grants for supplemental vocational education assistance

Five percent of the funds available under this subchapter shall be available only for grants under section 822 of this title except that such grants shall not increase the funds available in any prime sponsor's area by more than 20 percent of the amount allocated to such prime sponsor under subsection (a) of this section.

(d) Allocation to State prime sponsors for costs in staffing and servicing State Manpower Service Councils

One percent of the amount allocated under subsection (a) of this section shall be available to the Secretary to be allocated in the same manner as provided under subsection (a) of this section to State prime sponsors for the costs incurred in carrying out the provisions of section 817(a)(2)(B) of this title. If any State does not need the amount allocated under this subsection for any fiscal year, that amount shall be

available for State services under section 816 of this title.

(e) Allocation for State services under special provisions relating to State prime sponsors

Four percent of the amounts available for this subchapter shall be available to each State in the same proportion as that State's allocation under subsection (a) of this section for State services under section 816 of this title.

(f) Discretion of Secretary

The remainder of the funds shall be available in the Secretary's discretion. In exercising his discretion the Secretary shall first utilize such funds to provide each prime sponsor with an amount for any fiscal year equal to 90 percent of such area's manpower allotment in the preceding fiscal year. The remainder shall be distributed in the Secretary's discretion among areas served by prime sponsors (or where a prime sponsor's plan has not been approved, an area served by the Secretary under his authority in section 820 of this title). In exercising his discretion the Secretary shall take into account the need for continued funding of programs of demonstrated effectiveness.

(g) Source of funds for grants to prime sponsors serving rural areas having a high level of unemployment

Grants made to prime sponsors designated under section 812(a)(5) of this title shall be from funds not allocated under subsection (a) of this section.

(h) Publication in Federal Register

As soon as practicable after funds are appropriated to carry out this chapter for any fiscal year, the Secretary shall publish in the Federal Register the allotments made pursuant to this section. Allotments under this section shall be based on the latest satisfactory data and estimates available.

(i) Reallocations

The Secretary is authorized to make such reallocations under this subchapter as he deems appropriate of the unobligated amount of any allotment pursuant to subsection (a) of this section to the extent that the Secretary determines that it will not be required for the period for which such allotment is available. Allotted amounts may not be reallocated for any reason before the expiration of the ninth month of the fiscal year for which such funds were allotted and thereafter may be reallocated only if the Secretary has provided thirty days' advance notice to the prime sponsor for such area and to the Governor of the State of the proposed reallocation, during which period of time the prime sponsor and the Governor may submit comments to the Secretary. After considering any comments submitted during such period of time, the Secretary shall notify the Governor and affected prime sponsors of any decision to reallocate funds and shall publish any such decision in the Federal Register. Priority shall be given in reallocating such funds to other areas within the same State.

(Pub. L. 93-203, title I, § 103, Dec. 28, 1973, 87 Stat. 842.)

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976 THROUGH SEPTEMBER 30, 1976 DEEMED PART OF FISCAL YEAR BEGINNING ON JULY 1, 1975; EXCEPTION

Pub. L. 94-274, title I, § 117, Apr. 21, 1976, 90 Stat. 389, provided that for the purposes of this chapter, the period of July 1, 1976, through Sept. 30, 1976, was to be treated as part of the fiscal year beginning on July 1, 1975, except that such period was not to be included in such fiscal year for purposes of the percentages specified in section 813(a)(4) and (f) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 820, 822, 872, 873, 981 of this title.

§ 814. Prime sponsor's planning councils

Each prime sponsor designated under this subchapter shall establish a planning council consisting, to the extent practical, of members who are representative of the client community and of community-based organizations, the employment service, education and training agencies and institutions, business, labor, and, where appropriate, agriculture. The prime sponsor shall appoint the members of the council, designate the chairman, and provide professional, technical, and clerical staff to serve the council. It is the function of the council to submit recommendations regarding program plans and basic goals, policies, and procedures, to monitor and provide for objective evaluations of employment and training programs conducted in the prime sponsorship area, and to provide for continuing analyses of needs for employment, training, and related services in such area. Any final decision with respect to such recommendations shall be made by the prime sponsor.

(Pub. L. 93-203, title I, § 104, Dec. 28, 1973, 87 Stat. 843.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 969 of this title.

§ 815. Conditions for receipt of financial assistance

(a) Submission of comprehensive manpower plan

The Secretary shall not provide financial assistance for any fiscal year to a prime sponsor unless such sponsor submits a comprehensive manpower plan, in such detail as the Secretary deems necessary, which—

(1) sets forth a comprehensive manpower program which meets the objectives of this subchapter, including (A) a description of the services to be provided, and performance goals, (B) assurance that such services will be administered by or under the supervision of the prime sponsor, (C) a description of the geographical areas to be served under the plan, and (D) assurances that to the maximum extent feasible manpower services, including the development of job opportunities, will be provided to those most in need of them, including low-income persons and persons of limited English-speaking ability, and that the need for continued funding of programs of demonstrated effectiveness is taken into account in serving such groups and persons;

(2) provides, in the case of prime sponsors who are recipients of funds under subchapter II of this chapter for the development of a public service employment program, that it is

fully integrated with the services under this subchapter in order to assure that persons employed in such a program are afforded a better opportunity to find regular employment not supported under this chapter;

(3)(A) provides appropriate arrangements with community-based organizations serving the poverty community, and other special target groups for their participation in the planning of programs included in the plan; (B) provides for utilizing those services and facilities which are available, with or without reimbursement of the reasonable cost, from Federal, State, and local agencies to the extent deemed appropriate by the prime sponsor, after giving due consideration to the effectiveness of such existing services and facilities, including, but not limited to, the State employment service, State vocational education and vocational rehabilitation agencies, area skills centers, local educational agencies, postsecondary training and education institutions, and community action agencies, but nothing contained herein shall be construed to limit the utilization of services and facilities of private agencies, institutions and organizations (such as private businesses, labor organizations, private employment agencies, and private educational and vocational institutions) which can, at comparable cost, provide substantially equivalent training or services or otherwise aid in reducing more quickly unemployment or current and prospective manpower shortages; (C) provides that in making arrangements for institutional training priority shall be given (to the extent feasible) to the use of skills centers established under the authority of section 2601 of title 42; (D) provides arrangements to the extent feasible for the coordination of services for which financial assistance is provided under programs administered by the Secretary of Labor relating to manpower and manpower-related services; and (E) provides such arrangements as may be appropriate to promote maximum feasible use of apprenticeship or other on-job training opportunities available under section 1787 of title 38.

(4) provides for paying the allowances and compensation provided by section 821 of this title;

(5) provides that any transitional public service employment programs meet the requirements of section 845(c) and section 848 of this title, and that persons hired to fill jobs created by such programs will be residents of the areas described under paragraph (1)(C) of this subsection;

(6) provides assurances that programs of institutional training be designed for occupations in which skill shortages exist and assurances that such programs and training on the job shall, wherever possible, result in employment which provides economic self-sufficiency;

(7) contains such other information, assurances, statements, and arrangements consistent with the provisions of this chapter as the Secretary shall prescribe by regulation including provisions designed to assist the Secretary in carrying out his special responsibilities under this section and section 818 of this title.

(b) Certification

The Secretary shall not provide financial assistance for any fiscal year to a prime sponsor unless such sponsor certifies that—

(1) its plan meets all the requirements of this section; and

(2) it will comply with all provisions of this chapter.

(c) Determination by Secretary

The Secretary shall provide financial assistance to each prime sponsor under this subchapter to carry out the plan submitted by each such prime sponsor upon determining that—

(1) the plan is consistent with the provisions of this subchapter;

(2) the plan was made public prior to submission to the Secretary;

(3) the prime sponsor has demonstrated maximum efforts to implement the provisions in the prior year's plan.

(Pub. L. 93-203, title I, § 105, Dec. 28, 1973, 87 Stat. 843; Pub. L. 94-444, § 12(b)(1), Oct. 1, 1976, 90 Stat. 1483.)

REFERENCES IN TEXT

Section 2601 of title 42, referred to in subsec. (a)(3)(C), was repealed by Pub. L. 93-203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883.

AMENDMENTS

1976—Subsec. (a)(3)(E). Pub. L. 94-444 added subsec. (a)(3)(E).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 818, 819, 872 of this title.

§ 816. Special provisions relating to State prime sponsors

(a) State comprehensive manpower plan

Any State seeking assistance under this chapter shall submit a State comprehensive manpower plan to the Secretary for approval in accordance with the requirements of this section.

(b) Requisite provisions of State comprehensive manpower plan

The State comprehensive manpower plan shall in addition to meeting the requirements of section 815 of this title—

(1) provide satisfactory arrangements for serving all geographical areas under its jurisdiction except areas served by an eligible applicant who has filed a notice of intent under section 812(c) of this title, except that such plan may be amended to include areas served by an eligible applicant whose plan is finally disapproved without prejudice to the remedies available to such eligible applicant under section 819 of this title;

(2) provide for the cooperation and participation of all State agencies providing manpower and manpower-related services in the implementation of comprehensive manpower services plans by prime sponsors in accordance with the provisions of this chapter;

(3) set forth an overall State plan for the development and sharing of resources and facilities needed to conduct manpower pro-

grams under its direct sponsorship without unnecessary duplication and otherwise in the most efficient and economical manner;

(4) provide for the coordination of programs financed under the Wagner-Peyser Act [29 U.S.C. 49 et seq.] in accordance with such rules, regulations, and guidelines as the Secretary determines necessary for the purpose of providing coordinated and comprehensive assistance to those individuals requiring manpower and manpower-related services to achieve their full occupational potential in accordance with the policies of this chapter;

(5) set forth arrangements for assisting the Secretary in carrying out his responsibilities for enforcing the requirement for Federal contractors and subcontractors to list all suitable employment openings with local offices of the State employment service and take affirmative action, as required in section 2012(a) of title 38;

(6) set forth arrangements, if any, which the State may desire to provide for planning areas to serve geographical regions within the State; and

(7) make adequate provision for the coordination of the manpower and related services to be provided by the State in areas to be served by prime sponsors other than the State, and that provision has been made for the establishment of mechanisms to (A) provide for the exchange of information between States and local governments on State, intrastate, and regional planning in areas such as economic development, human resource development, education, and such other areas that may be relevant to manpower planning; and (B) promote the coordination of all manpower plans in a State so as to eliminate conflict, duplication, and overlapping between manpower services.

(c) Use of available funds

Funds available to each State under section 813(e) of this title may be used for—

(1) the provision of services under this chapter throughout the State by State agencies responsible for employment and training and related services;

(2) providing financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market areas;

(3) developing and publishing information regarding economic, industrial, and labor market conditions, including but not limited to job opportunities and skill requirements, labor supply in various skills, occupational outlook and employment trends in various occupations, and economic and business development and location trends;

(4) providing, without reimbursement and upon request, to any prime sponsor serving an area within the State, such information and technical assistance as may be appropriate to assist any such prime sponsor in developing and implementing its programs under this chapter; and

(5) carrying out special model training and employment programs and related services, including programs for offenders similar to programs described in section 871(c) of this title.

(d) Annual compliance certification

The State prime sponsor shall annually certify compliance with all the requirements for State prime sponsors.

(Pub. L. 93-203, title I, § 106, Dec. 28, 1973, 87 Stat. 845; Pub. L. 94-444, § 12(b)(2), Oct. 1, 1976, 90 Stat. 1483.)

REFERENCES IN TEXT

The Wagner-Peyser Act, referred to in subsec. (b)(4), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified principally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (b)(5). Pub. L. 94-444 substituted "take affirmative action" for "provide special emphasis".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 813, 818, 819 of this title.

§ 817. State Manpower Services Council

(a)(1) Any State which desires to be designated as a prime sponsor and to enter into arrangements with the Secretary under this subchapter shall establish a Manpower Services Council (hereinafter referred to as the "Council") which shall exercise the powers and duties set forth in this section.

(2) The Council established pursuant to paragraph (1) shall—

(A) be appointed by the Governor (who shall designate one member thereof to be Chairman), and shall be composed of—

(i) representatives of the units or combinations of units of general local government in such State, who shall comprise at least one-third of the membership of the Council, which have comprehensive manpower plans approved under section 818 of this title (except that the initial appointments to the Council may consist of representatives of units or combinations of units of general local government described in clauses (2), (3), (4), and (5) of section 812(a) of this title which have indicated an intention to submit a plan for approval under section 818 of this title), and such representatives shall be designated by the chief executive officers of the units or combination of units of general local government which qualify for representation under this section in accordance with procedures agreed upon by such chief executive officers;

(ii) one representative each of the State board of vocational education and the public employment service of such State;

(iii) one representative of the State Advisory Council on Vocational Education created pursuant to section 2305 of title 20;

(iv) one representative of each such other State agency as the Governor may determine to have a direct interest in overall manpower training and utilization within the State;

(v) representatives of organized labor;

(vi) representatives of business and industry;

(vii) representatives of community-based organizations and of the client community to be served under this chapter (including, where persons of limited English-speaking ability represent a substantial portion of the client population, appropriate representation of such persons); and

(viii) representatives of the general public.

(B) be appropriately staffed and serviced by the State prime sponsor;

(C) meet at such times and in such places as it deems necessary.

(b) The council shall—

(1) review the plans of each prime sponsor and the plans of State agencies for the provision of services to such prime sponsors, and make recommendations to such prime sponsors and agencies for the more effective coordination of efforts to meet the overall manpower needs of the State;

(2) continuously monitor the operation of programs conducted by each prime sponsor, and the availability, responsiveness, and adequacy of State services, and make recommendations to the prime sponsors, to agencies providing manpower services, and to the Governor and the general public with respect to ways to improve the effectiveness of such programs or services in fulfilling the purposes of this chapter;

(3) make an annual report to the Governor which shall be a public document, and issue such other studies, reports, or documents as it deems advisable to assist prime sponsors or to otherwise help carry out the purposes of this chapter.

(4)(i) identify, after consultation with the State Advisory Council on Vocational Education, the employment and training and vocational education needs of the State and assess the extent to which employment training, vocational education, vocational rehabilitation, and other programs assisted under this chapter and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and (ii) comment at least once annually, on the reports of the State Advisory Council on Vocational Education, which comments shall be included in the annual report submitted by the Council pursuant to this section and in the annual report submitted by the State Advisory Council pursuant to section 2305 of title 20.

(Pub. L. 93-203, title I, § 107, Dec. 28, 1973, 87 Stat. 846; Pub. L. 94-482, title II, § 203(a), Oct. 12, 1976, 90 Stat. 2213.)

AMENDMENTS

1976—Subsec. (a)(2)(A). Pub. L. 94-482, § 203(a)(1), added cl. (iii). Former cls. (iii) to (vii) were redesignated as (iv) to (viii), respectively.

Subsec. (b)(4). Pub. L. 94-482, § 203(a)(2), added subsec. (b)(4).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 204(a)(2) of Pub. L. 94-482 provided in part that the amendments to this section and sections 952 and 953 of this title by section 203 of Pub. L. 94-482 shall be effective on Oct. 1, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 813 of this title; title 20 sections 2305, 2307.

§ 818. Review of comprehensive manpower plans

(a) Approval by Secretary of Labor

The Secretary shall not approve a comprehensive manpower plan or any amendment thereto until he determines that it meets the requirements of section 815 of this title, and in the case of a State plan section 816 of this title, and that the plan was submitted to, and an opportunity to comment thereon provided, the Governor of the State and appropriate officials in units of general local government of the area to be served.

(b) Hearing

(1) The Secretary shall not finally disapprove any comprehensive manpower plan submitted under this subchapter, or any modifications thereof, without first affording the prime sponsor submitting the plan reasonable notice and opportunity for a hearing.

(2) If the Secretary receives a formal allegation from an affected unit of general local government that a prime sponsor has changed its comprehensive manpower plan so that it no longer complies with section 815 of this title or that in the administration of the plan there is a failure to comply substantially with any such provision, with any provision of the plan, or with any requirements of section 983 or 984 of this title, he shall, and, if he receives such an allegation from any other interested person, he may, or, if such allegation is supported by substantial evidence, he shall, after due notice and opportunity for a hearing to the prime sponsor, determine whether the allegation is true. If he determines such an allegation to be true, the Secretary shall notify the prime sponsor that no further payments will be made to the prime sponsor under the plan (or, in his discretion, that further payments will be limited to programs under or portions of the plan not affected by such failure), until he is satisfied that there will no longer be any failure to comply. Until he is so satisfied, the Secretary shall make no further payments to such sponsor under the plan (or shall limit payments to programs under the plan not affected by the failure).

(c) Percentage of funds devoted to particular programs

The Secretary shall not disapprove any plan solely because of the percentage of funds devoted to a particular program or activity authorized under section 811 of this title.

(d) Revocation of plan

Whenever the Secretary determines, after notice and opportunity for a public hearing, that any prime sponsor designated to serve under this chapter is—

(1) maintaining a pattern or practice of discrimination in violation of section 983(1) or section 991(a) of this title or otherwise failing to serve equitably the economically disadvantaged, unemployed or underemployed persons in the area it serves;

(2) incurring unreasonable administrative costs in the conduct of activities and programs, as determined pursuant to regulation;

(3) failing to give due consideration to continued funding of programs of demonstrated effectiveness including those previously conducted under provisions of law repealed by section 714 of this Act; or

(4) otherwise materially failing to carry out the purposes and provisions of this chapter;

the Secretary shall revoke the prime sponsor's plan for the area, in whole or in part, and to the extent necessary and appropriate shall not make any further payments to such prime sponsor under this chapter, and he shall notify such sponsor to return to him all or part of the unexpended sums paid under this chapter during that fiscal year.

(Pub. L. 93-203, title I, § 108, Dec. 28, 1973, 87 Stat. 847; Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

REFERENCES IN TEXT

Section 714 of this Act, referred to in subsec. (d)(3), is set out as a "Repeal of Predecessor Programs; Availability of Unexpended Appropriations" note under section 801 of this title. The provisions of law repealed by such section 714 are the Manpower Development and Training Act of 1962 [section 2571 et seq. of Title 42, The Public Health and Welfare] and parts A, B, and E of title I of the Economic Opportunity Act of 1964 [sections 2711 to 2729, 2731 to 2749, and 2769 to 2769f of Title 42].

AMENDMENTS

1974—Subsec. (b)(2). Pub. L. 93-567 substituted "section 703 or 704" for "section 603 or 604" which for purposes of codification has been translated as "section 983 or 984".

Subsec. (d)(1). Pub. L. 93-567 substituted "section 703(1) or section 711(a)" for "section 603(1) or section 611(a)" which for purposes of codification has been translated as "section 983(1) or section 991(a)".

Subsec. (d)(3). Pub. L. 93-567 substituted "section 714 of this Act" for "section 614 of this Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 817, 819, 820 of this title.

§ 819. Judicial review

(a) United States Court of Appeals

If any prime sponsor is dissatisfied with the Secretary's final action with respect to the approval of its comprehensive manpower plan submitted under section 815 or section 816 of this title or with his final action under section 818 of this title, such prime sponsor may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which the prime sponsor is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. Thereupon the Secretary shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28.

(b) Findings of fact

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Further review by United States Supreme Court

The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 93-203, title I, § 109, Dec. 28, 1973, 87 Stat. 848.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 816 of this title.

§ 820. Authority of Secretary to provide services

(a) In any area of a State which has not qualified as a prime sponsor and for which no other prime sponsor has qualified under paragraph (2), (3), (4), or (5) of section 812(a) of this title or where the Secretary has taken an action under subsection (b)(2) or (d) of section 818 of this title which results in such services not being provided in such area, the Secretary is authorized and directed out of funds allotted to such State or local area under section 813(a) of this title to provide for continuing programs by making payments directly to public and private nonprofit agencies and organizations conducting activities which he determines are not in violation of the requirements of this section. To the extent necessary to assure the delivery of services in the areas served by any prime sponsor subject to the provisions of this section, the Secretary is authorized (if no other eligible prime sponsor is designated under section 812 of this title to serve such area) to make grants to and enter into contracts with public and private nonprofit agencies and organizations in the same manner and to the same extent as if the Secretary were the prime sponsor for that area.

(b) The Secretary shall, prior to making any payments under this chapter for any fiscal year, enter into an agreement with any prime sponsor receiving payments under this chapter which contains provisions adequate to assure that the provisions of this section are carried out effectively.

(Pub. L. 93-203, title I, § 110, Dec. 28, 1973, 37 Stat. 848.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 813, 883 of this title.

§ 821. Allowances

(a) Basic weekly allowances for individuals receiving training or education under this subchapter for which no wages are payable shall be at a rate prescribed by the Secretary which when added to amounts received by the trainee in the form of unemployment compensation payments shall equal the minimum wage for a work week of forty hours under section

206(a)(1) of this title or, if higher, under the applicable State or local minimum wage law, and such basic allowances shall, in the case of an individual with dependents, be increased by $5 a week for each dependent over two up to a maximum of four additional dependents. The prime sponsor may waive the payment of all or part of the allowances when it determines, under regulations prescribed by the Secretary, that such waiver will promote the purposes of this chapter. Trainees receiving public assistance or whose needs or income are taken into account in determining such public assistance payments to others, shall receive an incentive allowance of $30 per week. Such allowance shall be disregarded in determining the amount of public assistance payments under Federal or Federally assisted public assistance programs. In prescribing allowances, the prime sponsor shall, in accordance with regulations prescribed by the Secretary, allow additional sums for special circumstances such as exceptional expenses incurred by trainees, including but not limited to meal and travel allowances, or he may reduce such allowances by an amount reflecting the fair value of meals, lodging, or other necessaries furnished to the trainee. The prime sponsor shall take such action as may be necessary to insure that such persons receive no allowances with respect to periods during which they are failing to participate in such programs, training, or instruction as prescribed herein without good cause. Notwithstanding the preceding provisions of this subsection, the prime sponsor shall, in accordance with such regulations as the Secretary shall prescribe, make such adjustments as he deems appropriate in allowances which would otherwise be payable under this subchapter, including but not limited to adjustments which take into account the amount of time per week spent by the individual participating in such programs and adjustments to reflect the special economic circumstances which exist in the area in which the program is to be carried on. Allowances shall not be paid for any course of training having a duration in excess of one hundred and four weeks.

(b) Individuals receiving training on the job shall be compensated by the employer at such rates, including periodic increases, as may be deemed reasonable under regulations prescribed by the Secretary, considering such factors as industry, geographical region, and trainee proficiency, but in no event at a rate less than that specified in section 206(a)(1) of this title or, if higher, under the applicable State or local minimum wage law.

(Pub. L. 93-203, title I, § 111, Dec. 28, 1973, 87 Stat. 849.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 815 of this title; title 20 sections 1393d, 2415.

§ 822. Supplemental vocational education assistance

(a) Grants to Governors

From the funds available to him for this section, the Secretary shall make grants to Governors to provide financial assistance, through State vocational education boards, to provide needed vocational education services in areas served by prime sponsors.

(b) Allocation of funds

All of the sums available to carry out this section shall be allotted among the States in the manner provided for allotting funds under section 813(a) of this title.

(c) Use of funds

Funds available under this section shall be used only for providing vocational education and services to participants in programs under this subchapter in accordance with an agreement between the State vocational education board and the prime sponsor.

(Pub. L. 93-203, title I, § 112, Dec. 28, 1973, 87 Stat. 850.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 813 of this title.

SUBCHAPTER II—PUBLIC SERVICE EMPLOYMENT PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 802, 815, 871, 963, 964, 967, 982 of this title; title 42 sections 3056a, 6723.

§ 841. Congressional statement of purpose

It is the purpose of this subchapter to provide unemployed and underemployed persons with transitional employment in jobs providing needed public services in areas qualifying for assistance and, wherever feasible, related training and manpower services to enable such persons to move into employment or training not supported under this subchapter.

(Pub. L. 93-203, title II, § 201, Dec. 28, 1973, 87 Stat. 850; Pub. L. 93-567, title I, § 106(a), Dec. 31, 1974, 88 Stat. 1849.)

AMENDMENTS

1974—Pub. L. 93-567 substituted "qualifying for assistance" for "of substantial unemployment".

§ 842. Allocation of funds

(a) Percentage of allotments

Eighty per centum of funds available for any fiscal year for use in areas of substantial unemployment under this subchapter shall be allocated among eligible applicants in accordance with the number of unemployed residing in areas of substantial unemployment within the jurisdiction of the applicant compared to the number of unemployed residing in all such areas.

(b) Discretion of Secretary

The remainder may be distributed by the Secretary in his discretion taking into account the severity of unemployment within such areas.

(c) Publication in Federal Register

Whenever the Secretary allocates any funds available under subsection (b) of this section through a distribution based upon a formula, he shall, not later than 30 days prior to such allocation, publish in the Federal Register for comment the specific formula upon which such distribution is based, the rationale supporting the selection of the formula, and the proposed distribution to each prime sponsor. After con-

sideration of comments received under the preceding sentence, the Secretary shall publish final allocations.

(Pub. L. 93-203, title II, § 202, Dec. 28, 1973, 87 Stat. 850, Pub. L. 93-567, title I, § 106(b), Dec. 31, 1974, 88 Stat. 1849; Pub. L. 94-444, § 14(a), Oct. 1, 1976, 90 Stat. 1487.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-444 added subsec. (c).

1974—Subsec. (a). Pub. L. 93-567 provided for use of funds in areas of substantial unemployment.

USE OF FUNDS; WAIVER; EFFECTIVE DATE OF PROVISIONS

Section 4(a) of Pub. L. 94-444 provided that:

"(1) With respect to appropriations made by the Emergency Supplemental Appropriations Act of 1976 (Public Law 94-266, enacted April 15, 1976) for the purpose of carrying out activities authorized by title II of the Comprehensive Employment and Training Act of 1973 [this subchapter]—

"(A) notwithstanding any other provision of law, funds made available under section 202(b) of the Comprehensive Employment and Training Act of 1973 [subsec. (b) of this section] may be used in any areas qualifying under title VI of such Act [subchapter VI of this chapter] to provide a continuation of public service employment activities under both title II and title VI of such Act; and

"(B) in order to enable persons employed in public service jobs financially assisted under title VI of such Act to be transferred to jobs financially assisted under title II of such Act, the Secretary of Labor is authorized to waive the provision of section 205(a) of such Act [section 845(a) of this title] requiring a thirty-day period of unemployment.

"(2) The provisions of paragraph (1) of this subsection shall be deemed to have taken effect on the date of enactment of the Emergency Supplemental Appropriations Act of 1976 [Apr. 15, 1976]. Persons transferred after such date from jobs financially assisted under title VI of the Comprehensive Employment and Training Act of 1973 [subchapter VI of this chapter] to jobs financially assisted under title II of such Act [this subchapter], using funds made available under the Emergency Supplemental Appropriations Act of 1976, shall after the date of enactment of this Act [Oct. 1, 1976] be considered to be public service jobholders financially assisted under such title VI."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 981 of this title.

§ 843. Financial assistance

(a) The Secretary shall enter into arrangements with eligible applicants in accordance with the provisions of this subchapter in order to make financial assistance available in areas of substantial unemployment for the purpose of providing transititional employment for unemployed and underemployed persons in jobs providing needed public services, and training and manpower services related to such employment which are otherwise unavailable, and enabling such persons to move into employment or training not supported under this subchapter.

(b) Notwithstanding the provisions of section 848(a)(7) of this title, not less than 85 per centum of the funds allocated in accordance with the provisions of this subchapter which are used by an eligible applicant for public service employment programs under this subchapter shall be expended only for wages and employment benefits to persons employed in public service jobs pursuant to this subchapter, and the remainder of such funds may be used for administrative costs, including rental costs (within such reasonable limitations as the Secretary may prescribe with respect to the rental of space), and to obtain necessary supplies, equipment, and materials.

(Pub. L. 93-203, title II, § 203, Dec. 28, 1973, 87 Stat. 850; Pub. L. 94-444, § 3(a)(1), Oct. 1, 1976, 90 Stat. 1476.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-444 substituted "85 per centum" for "90 per centum" and added requirement that the remainder of the allocated funds may be used for administrative costs and to obtain necessary supplies, equipment, and materials.

§ 844. Eligible applicants

(a) Designation of prime sponsors and Indian tribes submitting applications as eligible applicants

Financial assistance under this subchapter may be provided by the Secretary only pursuant to applications submitted by eligible applicants which are—

(1) prime sponsors qualified under subchapter I of this chapter;

(2) Indian tribes on Federal or State reservations.

(b) Eligible applicants for fiscal year 1974

For fiscal year 1974, eligible applicants include any entity eligible to be a prime sponsor under section 812(a) of this title.

(c) Areas of substantial unemployment

For the purpose of this subchapter "areas of substantial unemployment" means any area of sufficient size and scope to sustain a public service employment program and which has a rate of unemployment equal to or in excess of 6.5 per centum for three consecutive months as determined by the Secretary. Determinations concerning the rate of unemployment shall be made by the Secretary at least once each fiscal year.

(d) Delegation of functions of program agent

(1) Whenever an area qualifying for assistance within the jurisdiction of an eligible applicant is also within the jurisdiction of a unit of general local government or a combination of such units having a population of 50,000 or more (but less than that necessary to qualify as a prime sponsor under subchapter I of this chapter), the eligible applicant shall delegate to such unit or units of general local government the functions of program agent with respect to the funds allocated to such eligible applicant on account of such area qualifying for assistance.

(2) For purposes of this subsection the functions of program agent include the administrative responsibility for developing, funding, overseeing, and monitoring programs within the area but such functions shall be carried on consistently with the application for financial assistance which shall be developed by the eligible applicant in cooperation with the program agent.

(3) Whenever two or more units of general local government qualify as program agents with respect to the same area qualifying for assistance the provisions of section 812(b)(2) of this title shall be applicable.

(e) Notice to Congress; publication in Federal Register

Whenever the Secretary makes any determination required by this section, he shall promptly notify the Congress and shall publish such determination in the Federal Register.

(Pub. L. 93-203, title II, § 204, Dec. 28, 1973, 87 Stat. 850; Pub. L. 93-567, title I, § 106(c), (d), Dec. 31, 1974, 88 Stat. 1849.)

AMENDMENTS

1974—Subsec. (a)(2). Pub. L. 93-567, § 106(c), deleted "and which include areas of substantial unemployment" following "State reservations".

Subsec. (d)(1). Pub. L. 93-567, § 106(d)(1), substituted "qualifying for assistance" for "of substantial unemployment" wherever appearing.

Subsec. (d)(3). Pub. L. 93-567, § 106(d)(2), substituted "qualifying for assistance" for "of substantial unemployment".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 851, 962, 963 of this title; title 42 section 3246a.

§ 845. Applications for financial assistance

(a) Design description of public service employment program set forth in application

Financial assistance under this subchapter may be provided by the Secretary for any fiscal year only pursuant to an application which is submitted by an eligible applicant and which is approved by the Secretary in accordance with the provisions of this subchapter. Any such application shall set forth a public service employment program designed to provide employment, in jobs providing needed public services, for persons residing in areas qualifying for assistance who have been unemployed for at least thirty days and, where appropriate, training and manpower services related to such employment which are otherwise unavailable, and to enable such persons to move into employment or training not supported under this subchapter.

(b) Aims of programs

Programs assisted under this subchapter shall, to the extent feasible, be designed with a view toward—

(1) developing new careers, or

(2) providing opportunities for career advancement, or

(3) providing opportunities for continued training, including on-the-job training, or

(4) providing transitional public service employment which will enable the individuals so employed to move into public or private employment or training not supported under this chapter.

(c) Requisite provisions of applications

An application for financial assistance for a public service employment program under this subchapter shall include provisions setting forth—

(1) assurances that the activities and services for which assistance is sought under this subchapter will be administered by or under the supervision of the applicant, identifying any agency or institution designated to carry out such activities or services under such supervision;

(2) a description of the area to be served by such programs, and a plan for effectively serving on an equitable basis the significant segments of the population to be served, including data indicating the number of potential eligible participants and their income and employment status;

(3) assurances that only persons residing within the area qualifying for assistance will be hired to fill jobs created under this subchapter, and that the public services provided by such jobs shall, to the extent feasible, be designed to benefit the residents of such areas;

(4) assurances that special consideration will be given to the filling of jobs which provide sufficient prospects for advancement or suitable continued employment by providing complementary training and manpower services designed to (A) promote the advancement of participants to employment or training opportunities suitable to the individuals involved, whether in the public or private sector of the economy, (B) provide participants with skills for which there is an anticipated high demand, or (C) provide participants with self-development skills, but nothing contained in this paragraph shall be construed to preclude persons or programs for whom the foregoing goals are not feasible or appropriate;

(5) assurances (A) that special consideration in filling transitional public service jobs will be given to unemployed persons who served in the Armed Forces in Indochina or Korea on or after August 5, 1964, in accordance with criteria established by the Secretary (and who have received other than dishonorable discharges), and a description of the specific steps to be undertaken during such fiscal year to provide such special consideration, and of the types of jobs to be made available to such veterans, with special emphasis on the development of jobs which will utilize, to the maximum extent feasible, the skills which such veterans acquired in connection with their military training and service, and (B) that the applicant shall (i) make special efforts to acquaint such veterans with the program and the public service jobs available to veterans under this chapter, and (ii) coordinate efforts in behalf of such veterans with those activities authorized by chapter 41 of title 38 (relating to Job Counseling and Employment Services for Veterans), or carried out by other public or private organizations or agencies;

(6) assurance that, to the extent feasible, public service jobs shall be provided in occupational fields which are most likely to expand within the public or private sector as the unemployment rate recedes;

(7) assurances that special consideration in filling transitional public service jobs will be given to unemployed persons who are the most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance under this title, but such special consideration shall not authorize the hiring of any person when any other person is on lay-off from the same or any substantially equivalent job;

(8) assurances that no funds received under this subchapter will be used to hire any person to fill a job opening created by the action of an employer in laying off or terminating the employment of any regular employee not supported under this subchapter in anticipation of filing the vacancy so created by hiring an employee to be supported under this subchapter;

(9) assurances that due consideration be given to persons who have participated in manpower training programs for whom employment opportunities would not be otherwise immediately available;

(10) a description of the methods to be used to recruit, select, and orient participants, including specific eligibility criteria, and programs to prepare the participants for their job responsibilities;

(11) a description of unmet public service needs and a statement of priorities among such needs;

(12) a description of jobs to be filled, a listing of the major kinds of work to be performed and skills to be acquired and the approximate duration for which participants would be assigned to such jobs;

(13) the wages or salaries to be paid persons employed in public service jobs under this subchapter and a comparison with the wages paid for similar public occupations by the same employer;

(14) where appropriate, the education, training, and supportive services (including counseling and health care services) which complement the work performed;

(15) the planning for and training of supervisory personnel in working with participants;

(16) a description of career opportunities and job advancement potentialities for participants;

(17) assurances that procedures established pursuant to section 847(a) of this title will be complied with;

(18) assurances that agencies and institutions to whom financial assistance is made available under this subchapter have undertaken, or will undertake, analyses of job descriptions and revaluations and, where shown necessary, revisions of qualification requirements at all levels of employment, including civil service requirements and practices relating thereto, in accordance with regulations prescribed by the Secretary, with a view toward removing artificial barriers to public employment of those whom it is the purpose of this subchapter to assist;

(19) assurances that the applicant will, where appropriate, maintain or provide linkages with upgrading and other manpower programs for the purpose of (A) providing those persons employed in public service jobs under this subchapter who want to pursue work with the employer, in the same or similar work, with opportunities to do so and to find permanent, upwardly mobile careers in that field, and (B) providing those persons so employed who do not wish to pursue permanent careers in such field, with opportunities to seek, prepare for, and obtain work in other fields;

(20) assurances that all persons employed under any such program, other than necessary technical, supervisory, and administrative personnel, will be selected from among unemployed and underemployed persons;

(21) assurances that the program will, to the maximum extent feasible, contribute to the elimination of artificial barriers to employment and occupational advancement, including civil service requirements which restrict employment opportunities for the disadvantaged;

(22) assurances that not more than one-third of the participants in the program will be employed in a bona fide professional capacity (as such term is used in section 213(a)(1) of this title), except that this paragraph shall not be applicable in the case of participants employed as classroom teachers, and the Secretary may waive this limitation in exceptional circumstances;

(23) a description of the manpower needs of local governments and of local educational agencies within the area to be served together with the comments of such governments and agencies where appropriate, and assurances that jobs will be allocated equitably to such governments and agencies taking into account the number of unemployed within their jurisdictions and the needs of the agencies;

(24) assurances that the jobs in each promotional line in no way infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service jobs not subsidized under this subchapter, and assurances that no job will be filled in other than an entry level position in each promotional line until applicable personnel procedures and collective bargaining agreements have been complied with;

(25) assurances that jobs funded under this subchapter are in addition to those that would be funded by the sponsor in the absence of assistance under this chapter; and

(26) such other assurances, arrangements, and conditions, consistent with the provisions of this subchapter, as the Secretary deems necessary, in accordance with such regulations as he shall prescribe.

(Pub. L. 93-203, title II, § 205, Dec. 28, 1973, 87 Stat. 851; Pub. L. 93-567, title I, § 106(e), (f), Dec. 31, 1974, 88 Stat. 1849; Pub. L. 94-444, § 7, Oct. 1, 1976, 90 Stat. 1482.)

AMENDMENTS

1976—Subsec. (c)(24). Pub. L. 94-444 substituted "promotional line" for "job category" in two places.

1974—Subsec. (a). Pub. L. 93-567, § 106(e), substituted "qualifying for assistance" for "of substantial unemployment".

Subsec. (c)(3). Pub. L. 93-567, § 106(f), substituted "area qualifying for assistance" for "areas of substantial unemployment".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 847, 962, 964, 982 of this title.

§ 846. Approval of applications

An application, or modification or amendment thereof, for financial assistance under

this subchapter may be approved only if the Secretary determines that—

(1) the application meets the requirements set forth in this subchapter;

(2) an opportunity has been provided to officials of the appropriate units of general local government to submit comments with respect to the application to the applicant and to the Secretary;

(3) an opportunity has been provided to the Governor of the State to submit comments with respect to the application to the applicant and to the Secretary; and

(4) where a labor organization represents employees who are engaged in similar work in the same area to that proposed in the application, an opportunity has been provided such organization to submit comments with respect to the application to the applicant and to the Secretary.

(Pub. L. 93-203, title II, § 206, Dec. 28, 1973, 87 Stat. 854.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 962 of this title.

§ 847. Special responsibilities of the Secretary

(a) Periodic reviews of status of persons employed in public service jobs

The Secretary shall establish procedures for periodic reviews by an appropriate agency of the status of each person employed in a public service job under this subchapter to assure that in the event that any person employed in a public service job under this subchapter and the reviewing agency find that such job will not provide sufficient prospects for advancement or suitable continued employment, maximum efforts shall be made to locate employment or training opportunities providing such prospects, and such person shall be offered appropriate assistance in securing placement in the opportunity which he chooses after appropriate counseling.

(b) Periodic review of implementing procedures

The Secretary shall review the implementation of the procedures established under subsection (a) of this section six months after funds are first obligated under this subchapter and at six-month intervals thereafter.

(c) Assistance to Indians in preparing, submitting, and implementing public service employment programs

Where the Secretary determines that an Indian tribe on a Federal or State reservation is unable to submit an application to carry out a public service employment program which meets the requirements of section 845 of this title, the Secretary shall assist such tribe in preparing, submitting, and implementing a public service employment program. The provision of section 848 of this title shall apply to programs carried out under this subsection.

(Pub. L. 93-203, title II, § 207, Dec. 28, 1973, 87 Stat. 854.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 845, 962 of this title.

§ 848. Special conditions

(a) Determinations by Secretary as prerequisite to providing financial assistance to public service employment programs

The Secretary shall not provide financial assistance for any program or activity under this subchapter unless he determines, in accordance with such regulations as he shall prescribe, that—

(1) the program (A) will result in an increase in employment opportunities over those opportunities which would otherwise be available, (B) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of non-overtime work or wages or employment benefits), (C) will not impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed, and (D) will not substitute public service jobs for existing federally assisted jobs;

(2) persons employed in public service jobs under this chapter shall be paid wages which shall not be lower than whichever is the highest of (A) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], if section 6(a)(1) of such Act [29 U.S.C. 206(a)(1)] applied to the participant and if he were not exempt under section 13 thereof [29 U.S.C. 213], (B) the State or local minimum wage for the most nearly comparable covered employment, or (C) the prevailing rates of pay for persons employed in similar public occupations by the same employer;

(3) funds under this subchapter will not be used to pay persons employed in public service jobs under this subchapter at a rate in excess of $10,000 per year;

(4) all persons employed in public service jobs under this subchapter will be assured of workmen's compensation, health insurance, unemployment insurance, and other benefits at the same levels and to the same extent as other employees of the employer and to working conditions and promotional opportunities neither more nor less favorable than such other employees enjoy;

(5) the provisions of section 351(a)(3) of title 41 (relating to health and safety conditions) shall apply to such program or activity;

(6) the program will, to the maximum extent feasible, contribute to the occupational development or upward mobility of individual participants;

(7) no funds under this subchapter will be used for the acquisition of, or for the rental or leasing of supplies, equipment, materials, or real property; and

(8) every participant shall be advised, prior to entering upon employment, of his rights and benefits in connection with such employment.

(b) Equitable distribution of public service employment opportunities

Consistent with the provisions of this subchapter, the Secretary shall make financial assistance under this subchapter available in such a manner that, to the extent practicable, public

service employment opportunities will be available on an equitable basis in accordance with the purposes of this subchapter among significant segments of the population of unemployed persons, giving consideration to the relative numbers of unemployed persons in each such segment.

(c) Notification to labor organizations

Where a labor organization represents employees who are engaged in similar work in the same area to that proposed to be performed under any program for which an application is being developed for submission under this subchapter, such organization shall be notified and afforded a reasonable period of time prior to the submission of the application in which to make comments to the applicant and to the Secretary.

(d) Regulations

The Secretary shall prescribe regulations to assure that programs under this subchapter have adequate internal administrative controls, accounting requirements, personnel standards, evaluation procedures, and other policies as may be necessary to promote the effective use of funds.

(e) Periodic reports

The Secretary shall not provide financial assistance for any program under this subchapter unless he determines, in accordance with regulations which he shall prescribe, that periodic reports will be submitted to him containing data designed to enable the Secretary and the Congress to measure the relative and, where programs can be compared appropriately, comparative effectiveness of the programs authorized under this subchapter and other federally supported manpower programs. Such data shall include information on—

(1) characteristics of participants including age, sex, race, health, education level, and previous wage and employment experience;

(2) duration in employment situations, including information on the duration of employment of program participants for at least a year following the termination of participation in federally assisted programs and comparable information on other employees or trainees of participating employers; and

(3) total dollar cost per participant, including breakdown between wages, training, and supportive services, all fringe benefits, and administrative costs.

The Secretary shall compile such information on a State, regional, and national basis, and shall include such information in the report required by section 849 of this title.

(f) Discrimination prohibited

The Secretary shall not provide financial assistance for any program under this subchapter unless the grant, contract, or agreement with respect thereto specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any program participant or any applicant for participation in such program because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(g) Political activities

The Secretary shall not provide financial assistance for any program under this subchapter which involves political activities; and neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be, in any way or to any extent, engaged in the conduct of political activities in contravention of chapter 15 of title 5.

(h) Sectarian instruction; religious worship

The Secretary shall not provide financial assistance for any program under this subchapter unless he determines that participants in the program will not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.

(Pub. L. 93-203, title II, § 208, Dec. 28, 1973, 87 Stat. 855.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (a)(2), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 847, 849, 962, 964, 981 of this title.

§ 849. Special report

(a) The Secretary shall transmit to the Congress at least annually a detailed report setting forth the activities conducted under this subchapter, including information derived from evaluations required by this subchapter and information on the extent to which (1) participants in such activities subsequently secure and retain public or private employment or participate in training or employability development programs, (2) segments of the population of unemployed persons are provided public service opportunities in accordance with the purposes of this subchapter.

(b) In compiling the data which the Secretary is required to report to the Congress under section 848(e) of this title, the Secretary shall obtain and compile information on practices and procedures implemented by prime sponsors affecting average annual wage rates paid to public service jobholders and public service job opportunities described under this subchapter. The Secretary is authorized to make general recommendations to prime sponsors, on a regional and area basis, as he may deem appropriate, consistent with section 848(a)(3) of this title (relating to the maximum annual wage rate per public service job holder), taking into account average wages in the various areas served and the cost of living in such areas, with the aim of maintaining the number of jobs on a nationwide average in federally supported wage rates equivalent to $7,800 per public service job holder.

(Pub. L. 93-203, title II, § 209, Dec. 28, 1973, 87 Stat. 856; Pub. L. 93-567, title I, § 105, Dec. 31, 1974, 88 Stat. 1848.)

AMENDMENTS

1974—Pub. L. 93-567 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 848, 962, 967 of this title.

§ 850. Utilization of funds

Funds available under this subchapter to an eligible applicant may, at its option, be utilized for residents of the area qualifying for such assistance for programs authorized under subchapter I and part A of subchapter III of this chapter.

(Pub. L. 93-203, title II, § 210, Dec. 28, 1973, 87 Stat. 857; Pub. L. 93-567, title I, § 106(g), Dec. 31, 1974, 88 Stat. 1849.)

AMENDMENT

1974—Pub. L. 93-567 substituted "for residents of the area qualifying for such assistance" for "for residents of the areas of substantial unemployment designated under this subchapter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 962 of this title.

§ 851. Determination of areas of substantial unemployment; placement goals, waiver

(a) The determinations to be made under section 844(c) of this title shall take into account the rate of unemployment for a period of three consecutive months even though all or part of such period may have occurred prior to December 28, 1973.

(b) No officer or employee of the Department of Labor shall, by regulation or otherwise, impose on any eligible applicant, as a condition for the receipt of financial assistance under this subchapter, any requirement that any eligible applicant must place in other jobs a specific number or proportion of public service job holders supported under this subchapter. The Secretary may establish placement goals for eligible applicants, except that such goals must be identified as goals, not requirements, and any form or other document developed pursuant to such regulations shall give written notice to that effect. Any eligible applicant shall have the right, clearly stated in such regulations, to request a waiver of such goals if, in his judgment, such goals are not feasible. Such waiver, a request for which may be submitted at any time, may be granted by the Secretary where, in his judgment, local conditions warrant it. Wherever such a waiver has been granted, failure to meet placement goals shall not be cited in any official review or evaluation of that eligible applicant's programs.

(Pub. L. 93-203, title II, § 211, Dec. 28, 1973, 87 Stat. 857; Pub. L. 93-567, title I, § 103, Dec. 31, 1974, 88 Stat. 1847.)

AMENDMENTS

1974—Pub. L. 93-567 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 962 of this title.

SUBCHAPTER III—SPECIAL FEDERAL RESPONSIBILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 802 of this title.

PART A—SPECIAL TARGET GROUPS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 811, 850 of this title.

§ 871. Special manpower target groups

(a) Additional manpower services

The Secretary shall use funds available under this subchapter to provide additional manpower services as authorized under subchapters I and II of this chapter to segments of the population that are in particular need of such services, including youth, offenders, persons of limited English-speaking ability, older workers, and other persons which the Secretary determines have particular disadvantages in the labor market. The Secretary shall take into account the need for continued funding of programs of demonstrated effectiveness.

(b) Persons of limited English-speaking ability

With respect to programs for persons of limited English-speaking ability under this chapter, the Secretary shall establish appropriate procedures to ensure that participants are provided with manpower training and related assistance and supportive services (where feasible, at times designed to meet the needs of individuals unable to attend during normal working hours) designed to increase the employment and training opportunities for unemployed and underemployed persons of limited English-speaking ability, including (A) the teaching of occupational skills in the primary language of such persons for occupations which do not require a high proficiency in English, and (B) developing new employment opportunities for limited English-speaking persons and opportunities for promotion within existing employment situations for such persons, including programs for the dissemination of appropriate information, and job placement, and counseling assistance, and the conduct of training and employment programs, in the primary language of such persons, as well as programs designed to increase the English-speaking ability of such persons.

(c) Offenders

With respect to programs for offenders referred to in subsection (a) of this section, the Secretary shall establish appropriate procedures to insure that participants are provided with such manpower training and related assistance and support services (including basic education, drug addiction or dependency rehabilitation, health care and other services) which will enable them to secure and obtain meaningful employment. To ensure the objectives of this subsection, the Secretary may, wherever feasible, provide for appropriate arrangements with employers and labor organizations, appropriate parole, probationary and judicial authorities, and for the utilization of training equipment comparable to that currently used for the job in which training is furnished. To support such programs, the Secretary shall de-

velop information concerning the special needs of offenders for such services, including special studies regarding the incidence of unemployment among offenders and the means of increasing employment opportunity for offenders.

(d) Veterans

The Secretary shall carry out fully and effectively his responsibilities for the assignment of assistant veterans employment representatives under section 2003 of title 38 and his other responsibilities under chapter 41 of title 38 and for the listing of all suitable employment openings with local offices of the State employment service by Federal contractors and subcontractors and providing for the special emphasis as required by section 2012(a) of title 38.

(Pub. L. 93-203, title III, § 301, Dec. 28, 1973, 87 Stat. 857.)

OLDER AMERICAN COMMUNITY SERVICE EMPLOYMENT PROJECTS AS PART OF OPERATION MAINSTREAM PROGRAM: APPROPRIATIONS

Pub. L. 94-135, title I, § 113(c), Nov. 28, 1975, 89 Stat. 725, authorized the use of sums appropriated to carry out section 3061 et seq. of Title 42, The Public Health and Welfare, for the fiscal year ending June 30, 1975, for older American community service employment projects conducted as part of the Operation Mainstream program under this subchapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 816 of this title; title 20 sections 1393a, 2412.

§ 872. Indian manpower programs

(a) Congressional findings

The Congress finds that (1) serious unemployment and economic disadvantage exist among members of Indian and Alaskan native communities; (2) there is a compelling need for the establishment of comprehensive manpower training and employment programs for members of those communities; (3) such programs are essential to the reduction of economic disadvantage among individual members of those communities and to the advancement of economic and social development in these communities consistent with their goals and life styles.

(b) Congressional declarations

The Congress therefore declares that, because of the special relationship between the Federal Government and most of those to be served by the provisions of this section, (1) such programs can best be administered at the national level; (2) such programs shall be available to federally recognized Indian tribes, bands, and individuals and to other groups and individuals of native American descent such as, but not limited to, the Lummis in Washington, the Menominees in Wisconsin, the Klamaths in Oregon, the Oklahoma Indians, the Passamaquoddys and Penobscots in Maine, and Eskimos and Aleuts in Alaska; (3) such programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development as determined by representatives of the communities and groups served by this part.

(c) Utilization of Indian tribes, bands, and groups; non-reservation Indians

(1) In carrying out his responsibilities under this section, the Secretary shall, wherever possible, utilize Indian tribes, bands or groups (including Alaska Native villages or groups as defined in the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688) having a governing body, for the provision of manpower services under this subchapter. When the Secretary determines that such tribe, band, or group has demonstrated the capability to effectively administer a comprehensive manpower program, he shall require such tribe, band, or group to submit to him a comprehensive plan meeting the requirements of section 815 of this title.

(2) In carrying out his responsibilities under this section the Secretary shall make arrangements with prime sponsors and organizations (meeting requirements prescribed by the Secretary) serving non-reservation Indians for programs and projects designed to meet the needs of such Indians for employment and training and related services.

(d) Approval of Indian tribes, bands, or groups for the utilization of public or private non-profit agencies

Whenever the Secretary determines not to utilize Indian tribes, bands, or groups for the provisions of manpower services under this section, he shall, to the maximum extent feasible, enter into arrangements for the provision of such services with public or private nonprofit agencies which meet with the approval of the tribes, bands, or groups to be served.

(e) Administrative procedures and machinery

The Secretary is directed to take appropriate action to establish administrative procedures and machinery (including personnel having particular competence in this field) for the administration of Indian manpower programs authorized under this chapter.

(f) Availability of funds

Funds available for this section shall be expended for programs and activities consistent with the purposes of this part, including but not limited to such programs and activities carried out by eligible applicants under other provisions of this chapter.

(g) Reservation of funds

For the purpose of carrying out this section, the Secretary shall reserve from funds available for this subchapter an amount equal to not less than 4 percent of the amount allocated pursuant to section 813(a)(1) of this title.

(h) Federal Government's trust responsibilities to Indians not abrogated

No provision of this section shall abrogate in any way the trust responsibilities of the Federal Government to Indian bands or tribes.

(Pub. L. 93-203, title III, § 302, Dec. 28, 1973, 87 Stat. 858.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(1), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see

Short Title note set out under section 1601 of Title 43 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 962 of this title.

§ 873. Migrant and seasonal farmworker manpower program

(a) The Congress finds and declares that—

(1) chronic seasonal unemployment and underemployment in the agricultural industry, substantially affected by recent advances in technology and mechanization, constitute a substantial portion of the Nation's rural manpower problem and substantially affects the entire national economy;

(2) because of the special nature of certain farmworker manpower problems such programs can best be administered at the national level.

(b)(1) Funds available for this section shall be expended for programs and activities consistent with the purposes of this section, including but not limited to programs and activities carried out by eligible applicants under other provisions of this chapter.

(2) For the purpose of carrying out this section, the Secretary shall reserve from funds available for this subchapter an amount equal to not less than 5 percent of the amount allocated pursuant to section 813(a)(1) of this title.

(Pub. L. 93-203, title III, § 303, Dec. 28, 1973, 87 Stat. 859.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 2561.

§ 874. Youth programs and other special programs

(a) The Secretary may provide financial assistance in urban and rural areas, including areas having large concentrations or proportions of low-income, unemployed persons, and rural areas having substantial outmigration to urban areas, for comprehensive work and training programs, and necessary supportive and follow-up services, including the following:

(1) programs to provide part-time employment, on-the-job training, and useful work experience for students from low-income families who are in the ninth through twelfth grades of school (or are of an age equivalent to that of students in such grades) and who are in need of the earnings to permit them to resume or maintain attendance in school;

(2) programs to provide unemployed, underemployed, or low-income persons (aged sixteen and over) with useful work and training (which must include sufficient basic education and institutional or on-the-job training) designed to assist those persons to develop their maximum occupational potential and to obtain regular competitive employment;

(3) jobs, including those in recreation and related programs, for economically disadvantaged youths during the summer months;

(4) special programs which involve work activities directed to the needs of those chronically unemployed poor who have poor employment prospects and are unable, because of age, lack of employment opportunity, or otherwise, to secure appropriate employment or training assistance under other programs, and which, in addition to other services provided, will enable such persons to participate in projects for the betterment, physical improvement, or beautification of the community or areas served by the program;

(5) special programs which provide unemployed or low-income persons with jobs leading to career opportunities, including new types of careers, in programs designed to improve the physical, social, economic, or cultural conditions of the community or area served;

(6) special services, when required, for middleaged and older men and women, including recruitment, placement, and counseling for such persons who are unemployed as a result of the closing of a plant or factory or a permanent large-scale reduction in the work force of a locality, and provide grants to or contracts with prime sponsors to assist such sponsors in securing part-time or temporary employment for middle-aged and older persons; and

(7) other manpower programs conducted by community-based organizations.

(b) To the maximum extent feasible, programs or components of programs conducted under this section shall be linked to comprehensive work and training programs conducted by prime sponsors under subchapter I of this chapter, but the Secretary may provide financial assistance to a public agency or private organization other than a prime sponsor to carry out one or more component programs described in subsection (a) of this section when he determines, after soliciting and considering comments of the appropriate prime sponsor, if any, that such assistance would enhance program effectiveness. In the case of programs under subsection (a)(1) of this section, financial assistance may be provided directly to local or State education agencies, after consultation with the Secretary of Health, Education, and Welfare, for the operation of such programs.

(Pub. L. 93-203, title III, § 304, Dec. 28, 1973, 87 Stat. 859.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 964, 985 of this title.

§ 875. Consultation with Secretary of Health, Education, and Welfare

The Secretary of Labor shall consult with the Secretary of Health, Education, and Welfare, with respect to arrangements for services of a health, education, or welfare character under this chapter, and the Secretary of Health, Education, and Welfare shall solicit the advice and comments of State educational agencies with respect to education services. Such services include but are not limited to basic or general education; educational programs conducted for offenders; institutional training; health care, child care, and other supportive services; and new careers and job restructuring in the health, education, and welfare professions. When the Secretary of Labor arranges for the provision of basic education and vocational training directly, pursuant to the provisions of this sub-

chapter, he shall obtain the approval of the Secretary of Health, Education, and Welfare for such arrangements.

(Pub. L. 93-203, title III, § 306, Dec. 28, 1973, 87 Stat. 860.)

PART B—RESEARCH, TRAINING, AND EVALUATION

§ 881. Research

(a) Establishment of comprehensive program of manpower research

To assist the Nation in expanding work opportunities and assuring access to those opportunities for all who desire it, the Secretary shall establish a comprehensive program of manpower research utilizing the methods, techniques, and knowledge of the behavioral and social sciences and such other methods, techniques, and knowledge as will aid in the solution of the Nation's manpower problems. This program will include, but not be limited to, studies, the findings of which may contribute to the formulation of manpower policy; development or improvement of manpower programs; increased knowledge about labor market processes; reduction of unemployment and its relationships to price stability; promotion of more effective manpower development, training, and utilization; improved national, regional, and local means of measuring future labor demand and supply; enhancement of job opportunities; skill training to qualify employees for positions of greater skill, responsibility, and remuneration; meeting of manpower shortages; easing of the transition from school to work, from one job to another, and from work to retirement, opportunities and services for older persons who desire to enter or reenter the labor force, and for improvements of opportunities for employment and advancement through the reduction of discrimination and disadvantage arising from poverty, ignorance, or prejudice.

(b) Experimental program

The Secretary shall establish a program of experimental, developmental, demonstration, and pilot projects, through grants to or contracts with public or private non-profit organizations, or through contracts with other private organizations, for the purpose of improving techniques and demonstrating the effectiveness of the specialized methods in meeting the manpower, employment, and training problems, however, nothing in this subsection shall authorize the Secretary to carry out employment programs experimenting with subsidized wages in the private sector or with wages less than those established by the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], for employment subject to that Act. In carrying out this subsection with respect to programs designed to provide employment and training opportunities for low-income people, the Secretary shall consult with such other agencies as may be appropriate. Where programs under this section require institutional training, appropriate arrangements for such training shall be agreed to by the Secretary of Labor and the Secretary of Health, Education, and Welfare.

(c) Program evaluation

The Secretary is authorized to conduct, either directly or by way of contract, grant, or other arrangement, a thorough evaluation of all programs and activities conducted pursuant to this chapter to determine the effectiveness of such programs and activities in meeting the special needs of disadvantaged, chronically unemployed, and low-income persons for meaningful employment opportunities and supportive services to continue or resume their education and employment and to become more responsible and productive citizens.

(d) Grants, contracts, and other arrangements

The Secretary shall conduct such research and investigations as give promise of furthering the objectives of this chapter either directly or through grants, contracts, or other arrangements.

(e) Relocation assistance

The Secretary is authorized to undertake projects (either directly or by grant or contract) for the purpose of demonstrating the feasibility of providing relocation assistance to unemployed workers residing in areas of substantial unemployment who would otherwise be eligible for public service employment under this chapter. Such assistance shall be in such form and amount as the Secretary deems appropriate for demonstration purposes, except that he shall use as a general guideline the form and amount of relocation assistance available under chapter 2 of title II of the Trade Act of 1974 [19 U.S.C. 2271 et seq.].

(Pub. L. 93-203, title III, § 311, Dec. 28, 1973, 87 Stat. 860; Pub. L. 94-444, § 10, Oct. 1, 1976, 90 Stat. 1483.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (b), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables volume.

The Trade Act of 1974, referred to in subsec. (e), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978. Chapter 2 of title II of the Trade Act of 1974 is classified principally to part 2 (§ 2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables volume.

AMENDMENTS

1976—Subsec. (e). Pub. L. 94-444 added subsec. (e).

§ 882. Labor market statistics and job bank

(a) Comprehensive system of labor market information

The Secretary shall develop a comprehensive system of labor market information on a national, State, local, or other appropriate basis, which shall be made publicly available in a timely fashion.

(b) Statistically accurate data on employment, underemployment, and labor demand

In addition to the monthly national unemployment statistics, the Secretary shall develop reliable methods, including the use of selected sample surveys, to produce more statistically accurate data on unemployment, underemployment and labor demand by State, local, and poverty areas.

(c) Annual statistical measure of labor market related economic hardship

The Secretary shall develop preliminary data for an annual statistical measure of labor market related economic hardship in the nation. Among the factors to be considered in developing such a measure are unemployment, labor force participation, involuntary part-time employment, and full-time employment at less than poverty wages.

(d) Household budget data

The Secretary shall develop methods to establish and maintain more comprehensive household budget data at different levels of living, including a level of adequacy, to reflect the differences of household living costs in regions and localities, both urban and rural.

(e) Sums set aside; notification to Congress

The Secretary shall set aside, out of sums available to the department for any fiscal year including sums available under section 802(e) of this title, an amount which he determines is necessary and appropriate to enable him to carry out the provisions of this section, and shall no later than sixty days after such sums are appropriated and made available notify the appropriate committees of the Congress of the amount so set aside and the basis for his determination of need and appropriateness.

(f) Omitted

(g) Job bank

The Secretary shall establish and carry out a nationwide computerized job bank and matching program (utilizing the listing of all suitable employment openings with local offices of the State employment service by Federal contractors and subcontractors and providing for the special emphasis as required by section 2012(a) of title 38) on a regional, State, and local basis, using electronic data processing and telecommunications systems to the maximum extent possible for the purpose of identifying sources of available persons and job vacancies, providing an expeditious means of matching the qualifications of unemployed, underemployed, and economically disadvantaged persons with employer requirements and job opportunities, and referring and placing such persons in jobs.

(Pub. L. 93-203, title III, § 312, Dec. 28, 1973, 87 Stat. 861.)

CODIFICATION

Subsec. (f) required the Secretary to report the results of his efforts under this section, to the Senate Committee on Labor and Public Welfare, now Human Resources, and to the House Committee on Education and Labor by Dec. 31, 1974, and was omitted from the Code, as executed.

§ 883. Evaluation

(a) Program comparisons

The Secretary shall provide for the continuing evaluation of all programs and activities conducted pursuant to this chapter, including their cost in relation to their effectiveness in achieving stated goals, their impact on communities and participants their implication for related programs, the extent to which they meet the needs of persons of various ages, and the adequacy of the mechanism for the delivery of services. In conducting the evaluations called for by this subsection, the Secretary shall compare the effectiveness of programs conducted by prime sponsors of the same class, of different classes, and shall compare the effectiveness of programs conducted by prime sponsors with similar programs carried out by the Secretary under section 820 of this title, or under this subchapter. He shall also arrange for obtaining the opinions of participants about the strengths and weaknesses of the programs.

(b) Reports to Secretary

In order to enable the Secretary to measure the relative and, where programs can be compared appropriately, comparative effectiveness of programs authorized under this chapter and part C of title IV of the Social Security Act [42 U.S.C. 630 et seq.], he shall require that periodic reports be submitted to him. Reports submitted under this subsection shall contain data which shall include information on—

(1) enrollee characteristics, including age, sex, race, health, education level, and previous wage and employment experience;

(2) duration in training and employment situations, including information on the duration of employment of program participants for at least a year following the termination of federally assisted programs and comparable information on other employees or trainees of participating employers; and

(3) total dollar cost per trainee, including breakdown between salary or stipend, training and supportive services, and administrative costs.

From the information received pursuant to this section, the Secretary shall compile the information on a State, regional, and national basis.

(c) Certificates and vouchers for economically disadvantaged

The Secretary is authorized to carry out a special program to demonstrate the efficiency of providing certificates or vouchers to economically disadvantaged, unemployed, and underemployed persons entitling private employers who provide employment, training, and services to each person volunteering to participate in such program to payment in amounts equal to the face value of the certificate for specified periods of time during which each such person may not be fully productive.

(Pub. L. 93-203, title III, § 313, Dec. 28, 1973, 87 Stat. 862.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title IV of the Social Security Act is classified generally to part C (§ 630 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

§ 884. Removal of artificial barriers to employment and advancement

The Secretary, in consultation with appropriate departments and agencies of the Federal Government, shall conduct a continuing study of the extent to which artificial barriers to employment and occupation advancement, including civil service requirements and practices relating thereto, within agencies conducting programs under this chapter, restrict the opportu-

nities for employment and advancement within such agencies and shall develop and promulgate guidelines, based upon such study, setting forth recommendations for task and skill requirements for specific jobs and recommended job descriptions at all levels of employment, designed to encourage career employment and occupational advancement within such agencies.

(Pub. L. 93-203, title III, § 314, Dec. 28, 1973, 87 Stat. 863.)

§ 885. Training and technical assistance

The Secretary, in consultation with the Secretary of Health, Education, and Welfare, and other appropriate officials, where appropriate, shall provide directly or through grants, contracts, or other arrangements, preservice and inservice training for specialized, supportive, and supervisory or other personnel and technical assistance which is needed in connection with the programs established under this chapter.

(Pub. L. 93-203, title III, § 315, Dec. 28, 1973, 87 Stat. 863.)

SUBCHAPTER IV—JOB CORPS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 802, 811 of this title.

§ 911. Congressional statement of purpose

This subchapter establishes a Job Corps for low-income disadvantaged young men and women, sets forth standards and procedures for selecting individuals as enrollees in the Job Corps, authorizes the establishment of residential and nonresidential centers in which enrollees will participate in intensive programs of education, vocational training work experience, counseling and other activities, and prescribes various other powers, duties, and responsibilities incident to the operation and continuing development of the Job Corps. The purpose of this subchapter is to assist young persons who need and can benefit from an unusually intensive program, operated in a group setting, to become more responsive, employable, and productive citizens; and to do so in a way that contributes, where feasible, to the development of National, State, and community resources, and to the development and dissemination of techniques for working with the disadvantaged that can be widely utilized by public and private institutions and agencies.

(Pub. L. 93-203, title IV, § 401, Dec. 28, 1973, 87 Stat. 863.)

§ 912. Establishment of Job Corps

There is established within the Department of Labor a "Job Corps".

(Pub. L. 93-203, title IV, § 402, Dec. 28, 1973, 87 Stat. 864.)

§ 913. Individuals eligible for enrollment in Job Corps

To become an enrollee in the Job Corps, a young man or woman must be a person who—

(1) is a permanent resident of the United States, who has attained age fourteen but not attained age twenty-two at the time of enrollment;

(2) is a low-income individual or member of a low-income family who requires additional education, training, or intensive counseling and related assistance in order to secure and hold meaningful employment, participate successfully in regular schoolwork, qualify for other training programs suitable to his needs, or satisfy Armed Forces requirements;

(3) is currently living in an environment so characterized by cultural deprivation, a disruptive homelife, or other disorienting conditions as to substantially impair his prospects for successful participation in any other program providing needed training, education, or assistance;

(4) is determined, after careful screening as provided for in sections 914 and 915 of this title, to have the present capabilities and aspirations needed to complete and secure the full benefit of the program authorized in this subchapter, and to be free of medical and behavioral problems so serious that he could not or would not be able to adjust to the standards of conduct and discipline or pattern of work and training which that program involves; and

(5) meets such other standards for enrollment as the Secretary may prescribe (including special standards for the enrollment on a residential basis of 14 and 15 year olds) and agrees to comply with all applicable Job Corps rules and regulations.

(Pub. L. 93-203, title IV, § 403, Dec. 28, 1973, 87 Stat. 864.)

§ 914. Screening and selection of applicants

(a) Rules

The Secretary shall prescribe necessary rules for the screening and selection of applicants for enrollment in the Job Corps. To the extent practicable, rules established under this section shall be implemented through arrangements which make use of agencies and organizations such as community action agencies, public employment offices, professional groups, and labor organizations. The rules shall establish specific standards and procedures for conducting screening and selection activities; shall encourage recruitment through agencies and individuals having contact with youths over substantial periods of time and able, accordingly, to offer reliable information as to their needs and problems; and shall provide for necessary consultation with other individuals and organizations, including court, probation, parole, law enforcement, education, welfare, and medical authorities and advisers. The rules shall also provide for—

(1) the interviewing of each applicant for the purpose of—

(A) determining whether his educational and vocational needs can best be met through the Job Corps or any alternative program in his home community;

(B) obtaining from the applicant pertinent data relating to his background, needs, and interests for evaluation in determining his eligibility and potential assignment; and

(C) giving the applicant a full understanding of the Job Corps program and making clear what will be expected of him as an enrollee in the event of his acceptance; and

(2) the conduct of a careful and systematic inquiry concerning the applicant's background for the effective development and, as appropriate, clarification of information concerning his age, citizenship, school and draft status, health, employability, past behavior, family income, environment, and other matters related to a determination of his eligibility.

(b) Payment for referrals

The Secretary shall make no payments to any individual or organization solely as compensation for the service of referring the names of candidates for enrollment in the Jobs Corps.

(c) Rural candidates

The Secretary shall take all necessary steps to assure that the enrollment of the Jobs Corps includes an appropriate number of candidates selected from rural areas, taking into account the proportion of eligible youth who reside in rural areas and the need to provide residential facilities for such youth in order to meet problems of wide geographic dispersion.

(Pub. L. 93–203, title IV, § 404, Dec. 28, 1973, 87 Stat. 864.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 913 of this title.

§ 915. Special limitations

(a) No individual shall be selected as an enrollee unless it is determined that there is reasonable expectation that he can participate successfully in group situations and activities with other enrollees, that he is not likely to engage in actions or behavior that would prevent other enrollees from receiving the benefit of the program or be incompatible with the maintenance of sound discipline and satisfactory relationships between any center to which he might be assigned and surrounding communities, and that he manifests a basic understanding of both the rules to which he will be subject and of the consequences of failure to observe those rules. Before selecting an individual who has a history of serious and violent behavior against persons or property, repetitive delinquent acts, narcotics addiction, or other major behavioral aberrations, the Secretary of Labor shall obtain a finding from a professionally qualified person who knows such potential enrollee's individual situation that there is reasonable expectation that his conduct will not be inimical to the goals and success of the Job Corps and that the opportunity provided by the Job Corps will help him to overcome his problem.

(b) An individual who otherwise qualifies for enrollment may be selected even though he is on probation or parole, but only if his release from the immediate supervision of the cognizant probation or parole officials is mutually satisfactory to those officials and the Secretary, does not violate applicable laws or regulations, and if the Secretary has arranged to provide all supervision of the individual and all reports to State or other authorities that may be necessary to comply with applicable probation or parole requirements.

(Pub. L. 93–203, title IV, § 405, Dec. 28, 1973, 87 Stat. 865.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 913 of this title.

§ 916. Enrollment and assignment

(a) Two year limit on enrollment

No individual may be enrolled in the Job Corps for more than two years, except as the Secretary may authorize in special cases.

(b) Military service obligation not relieved by Job Corps enrollment

Enrollment in the Job Corps shall not relieve any individual of obligations under the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

(c) Oath requirement

Each enrollee (other than a native and citizen of Cuba described in section 2949(3) of title 42 or a permanent resident of the Trust Territory of the Pacific Islands) must take and subscribe to an oath or affirmation in the following form: "I do solemnly swear (or affirm) that I bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies foreign and domestic." The provisions of section 1001 of title 18 shall be applicable to this oath or affirmation.

(d) Assignment to contiguous areas

After the Secretary has determined whether an enrollee is to be assigned to a men's training center, a conservation center, or a women's training center, the enrollee, shall be assigned to the center of the appropriate type in which a vacancy exists which is closest to the enrollee's home, except that the Secretary, on an individual basis, may waive this requirement when overriding considerations justify such action. Assignments to centers in areas more remote from the enrollee's home shall be carefully limited to situations in which such action is necessary in order to insure an equitable opportunity for disadvantaged youth from various sections of the country to participate in the program, to prevent undue delays in the assignment of individual enrollees, to provide an assignment which adequately meets the educational or other needs of the enrollee or is necessary for efficiency and economy in the operation of the program.

(e) Male enrollees

Assignments of male enrollees shall be made so that, at any one time, at least 40 per centum of those enrollees are assigned to conservation centers as described in section 917 of this title, or to other centers or projects where their work activity is primarily directed to the conservation, development, or management of public natural resources or recreational areas and is performed under the direction of personnel of agencies regularly responsible for the functions relating to such resources or areas.

(Pub. L. 93–203, title IV, § 406, Dec. 28, 1973, 87 Stat. 865.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (b), probably means the Military Selective Service Act of 1967, act June 24, 1948, ch. 625, 62 Stat. 604, as amended by Pub. L. 90-40, § 1(1), June 30, 1967, 81 Stat. 100, which is classified principally to section 451 et seq. of Title 50, App., War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, App., and Tables volume.

Section 2949(3) of title 42, referred to in subsec. (c), was repealed by Pub. L. 93-644, § 9(c)(6), Jan. 4, 1975, 88 Stat. 2314.

§ 917. Job Corps centers

(a) The Secretary may make agreements with Federal, State, or local agencies, or private organizations for the establishment and operation of Job Corps centers. Job Corps centers may be residential or nonresidential in character, or both, and shall be designed and operated so as to provide enrollees, in a well-supervised setting, with education, vocational training, work experience (either in direct program activities or through arrangements with employers), counseling, and other services appropriate to their needs. The centers shall include conservation centers, to be known as Civilian Conservation Centers, to be located primarily in rural areas and to provide, in addition to other training and assistance, programs of work experience focused upon activities to conserve, develop, or manage public natural resources or public recreational areas or to assist in developing community projects in the public interest. The centers shall also include men's and women's training centers to be located in either urban or rural areas and to provide activities which shall include training and other services appropriate for enrollees who can be expected to participate successfully in training for specific types of skilled or semiskilled employment.

(b) To the extent feasible, men's and women's training centers shall offer education and vocational training opportunities, together with supportive services, on a nonresidential basis to participants in programs described in subchapter I of this chapter. Such opportunities may be offered on a reimbursable basis or through such other arrangements as the Secretary may specify.

(Pub. L. 93-203, title IV, § 407, Dec. 28, 1973, 87 Stat. 866.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 916 of this title.

§ 918. Program activities

(a) Required features of program

Each Job Corps center shall be operated so as to provide enrollees with an intensive, well-organized and fully supervised program of education, vocational training, work experience, planned avocational and recreational activities, physical rehabilitation and development, and counseling. To the fullest extent feasible, the required program for each enrollee shall include activities designed to assist him in choosing realistic career goals, coping with problems he may encounter in his home community or in adjusting to a new community, and planning and managing his daily affairs in a manner that will best contribute to a long-term upward mobility. Center programs shall include required participation in center maintenance support and related work activity as appropriate to assist enrollees in increasing their sense of contribution, responsibility, and discipline.

(b) Education and vocational training

To the extent practicable, the Secretary may arrange for enrollee education and vocational training through local public or private educational agencies, vocational educational institutions, or technical institutes where such institutions or institutes can provide training comparable in cost and substantially equivalent in quality to that which he could provide through other means.

(c) Certificates

Arrangements for education shall, to the extent feasible, provide opportunities for qualified enrollees to obtain the equivalent of a certificate of graduation from high school. The Secretary, with the concurrence of the Secretary of Health, Education, and Welfare, shall develop certificates to be issued to enrollees who have satisfactorily completed their services in the Job Corps and which will reflect the enrollee's level of educational attainment.

(d) Coordination with community work-experience programs

The Secretary shall prescribe regulations to assure that Job Corps work-experience programs or activities do not displace presently employed workers or impair existing contracts for service and will be coordinated with other work-experience programs in the community.

(Pub. L. 93-203, title IV, § 408, Dec. 28, 1973, 87 Stat. 866.)

§ 919. Allowances and support

(a) Limitations; enrollee contributions

The Secretary may provide enrollees with such personal, travel and leave allowances, and such quarters, subsistence, transportation, equipment, clothing, recreational services, and other expenses as he may deem necessary or appropriate to their needs. Personal allowances shall be established at a rate not to exceed $35 per month during the first six months of an enrollee's participation in the program and not to exceed $50 per month thereafter, except that allowances in excess of $35 per month, but not exceeding $50 per month, may be provided from the beginning of an enrollee's participation if it is expected to be of less than six months' duration and the Secretary is authorized to pay personal allowances in excess of the rates specified herein in unusual circumstances as determined by him. Such allowances shall be graduated up to the maximum so as to encourage continued participation in the program, achievement and the best use by the enrollee of the funds so provided and shall be subject to reduction in appropriate cases as a disciplinary measure. To the degree reasonable, enrollees shall be required to meet or contribute to costs associated with their individual comfort and enjoyment from their personal allowances.

(b) Leave accrual rules

The Secretary shall prescribe specific rules governing the accrual of leave by enrollees. Except in the case of emergency, he shall in no event assume transportation costs connected with leave of any enrollee who has not completed at least six months service in the Job Corps.

(c) Readjustment allowance; advancement or reduction

The Secretary may provide each former enrollee upon termination, a readjustment allowance at a rate not to exceed $50 for each month of satisfactory participation in the Job Corps. No enrollee shall be entitled to a readjustment allowance, however, unless he has remained in the program at least ninety days, except in unusual circumstances as determined by the Secretary. The Secretary may, from time to time, advance to or on behalf of an enrollee such portions of his readjustment allowances as the Secretary deems necessary to meet extraordinary financial obligations incurred by that enrollee; and he may also, pursuant to rules or regulations, reduce the amount of an enrollee's readjustment allowance as a penalty for misconduct during participation in the Job Corps. In the event of an enrollee's death during his period of service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582 of title 5.

(d) Payment of readjustment allowance to enrollee's spouse, child, or other relative

Under such circumstances as the Secretary may determine, a portion of the readjustment allowance of an enrollee not exceeding $25 for each month of satisfactory service may be paid during the period of service of the enrollee directly to a spouse or child of an enrollee or to any other relative who draws substantial support from the enrollee, and any sum so paid shall be supplemented by the payment of an equal amount by the Secretary.

(Pub. L. 93–203, title IV, § 409, Dec. 28, 1973, 87 Stat. 867.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 922 of this title.

§ 920. Standards of conduct

(a) Within Job Corps centers standards of conduct and deportment shall be provided and stringently enforced. In the case of violations committed by enrollees, dismissals from the Corps or transfers to other locations shall be made in every instance where it is determined that retention in the Corps, or in the particular Job Corps center, will jeopardize the enforcement of such standards of conduct and deportment or diminish the opportunity of other enrollees.

(b) In order to promote the proper moral and disciplinary conditions in the Job Corps, the individual directors of Job Corps centers shall be given full authority to take appropriate disciplinary measures against enrollees including, but not limited to, dismissal from the Job Corps, subject to expeditious appeal procedures to higher authority, as provided under regulations established by the Secretary.

(Pub. L. 93–203, title IV, § 410, Dec. 28, 1973, 87 Stat. 868.)

§ 921. Community participation; community advisory councils

The Secretary shall encourage and shall cooperate in activities designed to establish a mutually beneficial relationship between Job Corps centers and surrounding or nearby communities. These activities shall include the establishment of community advisory councils to provide a mechanism for joint discussion of common problems and for planning programs of mutual interest. Whenever possible, such advisory councils shall be formed by and coordinated under the local community action agency. Youth participation in advisory council affairs shall be encouraged and where feasible separate youth councils may be established, to be composed of representative enrollees and representative young people from the communities. The Secretary shall establish necessary rules and take necessary action to assure that each center is operated in a manner consistent with this section with a view to achieving, so far as possible, objectives which shall include—

(1) giving community officials appropriate advance notice of changes in center rules, procedures, or activities that may affect or be of interest to the community;

(2) affording the community a meaningful voice in center affairs of direct concern to it, including policies governing the issuance and terms of passes to enrollees;

(3) providing center officials with full and rapid access to relevant community groups and agencies, including law enforcement agencies and agencies which work with young people in the community;

(4) encouraging the fullest practicable participation of enrollees in programs or projects for community improvement or betterment, with adequate advance consultation with business, labor, professional, and other interested community groups and organizations;

(5) arranging recreational, athletic, or similar events in which enrollees and local residents may participate together;

(6) providing community residents with opportunities to work with enrollees directly, as part-time instructors, tutors, or advisers, either in the center or in the community;

(7) developing, where feasible, job or career opportunities for enrollees in the community; and

(8) promoting interchanges of information and techniques among, and cooperative projects involving, the center and community schools, educational institutions, and agencies serving young people.

(Pub. L. 93–203, title IV, § 411, Dec. 28, 1973, 87 Stat. 868.)

§ 922. Counseling and job placement

(a) Testing and counseling at regular intervals

The Secretary shall provide for the counseling and testing of each enrollee at regular intervals to follow his progress in educational and vocational programs.

(b) Job placement

The Secretary shall counsel and test each enrollee prior to his scheduled termination to determine his capabilities and shall place him in a job in the vocation for which he is trained and in which he is likely to succeed, or shall assist him in attaining further training or education. In placing enrollees in jobs, the Secretary shall utilize the United States Employment Service to the fullest extent possible.

(c) Status and progress of terminees

The Secretary of Labor shall make arrangements to determine the status and progress of terminees and to assure that their need for further education, training, and counseling are met.

(d) Availability of training records to Department of Labor and Office of Economic Opportunity

Upon termination of an enrollee's training, a copy of his pertinent records, including data derived from his counseling and testing, other than confidential information, shall be made available immediately to the Department of Labor and the Office of Economic Opportunity.

(e) Readjustment allowance; records of former enrollees; copies to Secretary

The Secretary shall, to the extent feasible in accordance with section 2979(b) of title 42, arrange for the readjustment allowance provided for in section 919(c) of this title, less any sums already paid pursuant to subsection (d) of section 919 of this title, to be paid to former enrollees (who have not already found employment) at the public employment service office nearest the home of any such former enrollee if he is returning to his home, or at the nearest such office to the community in which the former enrollee has indicated an intent to reside. The Secretary shall make arrangements by which public employment service officers will maintain records regarding former enrollees who are thus paid at such offices including information as to—

(1) the number of former enrollees who have declined the offices' help in finding a job;

(2) the number who were successfully placed in jobs without further education or training;

(3) the number who were found to require further training before being placed in jobs and the types of training programs in which they participated; and

(4) the number who were found to require further remedial or basic education in order to qualify for training programs, together with information as to the types of programs for which such former enrollees were found unqualified for enrollment.

If the Secretary deems it advisable to utilize the services of any other public or private organization or agency in lieu of the public employment office, he shall arrange for that organization or agency to make the payment of the readjustment allowance and maintain the same types of records regarding former enrollees as are herein specified for maintenance by public employment service offices, and shall furnish copies of such records to the Secretary. In the case of enrollees who are placed in jobs by the Secretary prior to the termination of their participation in the Job Corps, the Secretary shall maintain records providing pertinent placement and follow-up information.

(Pub. L. 93-203, title IV, § 412, Dec. 28, 1973, 87 Stat. 869.)

TRANSFER OF FUNCTIONS

The Office of Economic Opportunity, established by section 2941 of Title 42, The Public Health and Welfare, was superseded by the Community Services Administration pursuant to Pub. L. 93-644, § 9(a), Jan. 4, 1975, 88 Stat. 805. References to the Office of Economic Opportunity now deemed to be references to the Community Services Administration, see section 2941(d)(2) of Title 42.

§ 923. Evaluation; experimental and developmental projects

(a) Publication of evaluation results; inclusion of summary in annual report

The Secretary shall provide for the careful and systematic evaluation of the Job Corps program, directly or by contracting for independent evaluations, with a view to measuring specific benefits, so far as practicable, and providing information needed to assess the effectiveness of program procedures, policies, and methods of operation. In particular, this evaluation shall seek to determine the costs and benefits resulting from the use of residential as opposed to nonresidential facilities, from the use of facilities combining residential and nonresidential components, from the use of centers with large as opposed to small enrollments, and from the use of different types of program sponsors, including public agencies, institutions of higher education, boards of education, and private corporations. The evaluation shall also include comparisons with proper control groups composed of persons who have not participated in the program. In carrying out such evaluations, the Secretary shall arrange for obtaining the opinions of participants about the strengths and weaknesses of the program and shall consult with other agencies and officials in order to compare the relative effectiveness of Job Corps techniques with those used in other programs, and shall endeavor to secure, through employers, schools, or other Government and private agencies specific information concerning the residence of former enrollees, their employment status, compensation, and success in adjusting to community life. The Secretary shall also secure, to the extent feasible, similar information directly from enrollees at appropriate intervals following their completion of the Job Corps program. The results of such evaluation shall be published and shall be summarized in the annual report of the Secretary.

(b) Grants or contracts; pilot projects; consultation with other Federal or State agencies; waiver; report to Secretary and Congress

The Secretary may undertake or make grants or contracts for experimental, research, or demonstration projects directed to developing or testing ways of securing the better use of facilities, of encouraging a more rapid adjustment of enrollees to community life that will permit a reduction in the period of their enrollment, of reducing transportation and support costs, or of otherwise promoting greater efficiency and ef-

fectiveness in the program authorized under this subchapter. These projects shall include one or more projects providing youths with education, training, and other supportive services on a combined residential and nonresidential basis. The Secretary may, if he deems it advisable, undertake one or more pilot projects designed to involve youth who have a history of serious and violent behavior against persons or property, repetitive delinquent acts, narcotics addiction, or other behavioral aberrations. Projects under this subsection shall be developed after appropriate consultation with other Federal or State agencies conducting similar or related programs or projects and with the prime sponsors, in the communities where the projects will be carried out. They may be undertaken jointly with other Federal or federally assisted programs, and funds otherwise available for activities under those programs shall, with the consent of the head of any agency concerned, be available to projects under this section to the extent they include the same or substantially similar activities. The Secretary may waive any provision of this subchapter which he finds would prevent the carrying out of elements of projects under this subsection essential to a determination of their feasibility and usefulness. He shall, in the annual report of the Secretary, report to the Congress concerning the actions taken under this section, including a full description of progress made in connection with combined residential and nonresidential projects.

(c) Model community vocational educational schools

In order to determine whether upgraded vocational education schools could eliminate or substantially reduce the school dropout problem, and to demonstrate how communities could make maximum utilization of existing educational and training facilities, the Secretary in cooperation with the Commissioner of Education, shall enter into one or more agreements with State educational agencies to pay the cost of establishing and operating model community vocational education schools and skill centers. Such facilities shall be centrally located in an urban area having a high dropout rate, a large number of unemployed youths, and a need in the area for a combination vocational school and skill center. No such agreement shall be entered into unless it contains provisions designed to assure that—

(1) a job survey be made of the area;

(2) the training program of the school and skill center reflect the job market needs as projected by the survey;

(3) an advisory committee composed of representatives of business, labor, education, and community leaders be formed to follow the center's activities and to make periodic recommendations regarding its operation;

(4) arrangements have been worked out with schools in the area and the administrator of the skill center for maximum utilization of the center both during and after school hours; and

(5) such accounting and evaluation procedures as the Secretary and the Commissioner of Education deem necessary to carry out the purpose of this project will be provided.

(Pub. L. 93-203, title IV, § 413, Dec. 28, 1973, 87 Stat. 870.)

CODIFICATION

The phrase "program authorized under this subchapter," appearing in subsec. (b), was, in the original, "program authorized under this part." The translation of "part" to "subchapter" was made as the probable intent of Congress in view of the fact that subchapter IV of this chapter, of which this section is a part, is not further subdivided into parts.

§ 924. Advisory boards and committees

The Secretary shall make use of advisory committees or boards in connection with the operation of the Job Corps, and the operation of Job Corps centers, whenever he determines that the availability of outside advice and counsel on a regular basis would be of substantial benefit in identifying and overcoming problems, in planning program or center development, or in strengthening relationships between the Job Corps and agencies, institutions, or groups engaged in related activities. Nothing in this section shall be considered as limiting the functions of the National Advisory Council, established pursuant to section 2945 of title 42, with respect to any matter or question involving the Job Corps; but this shall not prevent the establishment through or in cooperation with the National Advisory Council of one or more boards or committees under this section.

(Pub. L. 93-203, title IV, § 414, Dec. 28, 1973, 87 Stat. 871.)

TERMINATION OF ADVISORY BOARDS OR COMMITTEES

Advisory boards or committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of boards or committees established by the President or an officer of the Federal Government, such boards or committees are renewed by appropriate action prior to the expiration of such two-year period, or in the case of boards or committees established by the Congress, their duration is otherwise provided by law. Advisory boards or committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of boards or committees established by the President or an officer of the Federal Government, such boards or committees are renewed by appropriate action prior to the expiration of such two-year period, or in the case of boards or committees established by the Congress, their duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 925. Participation of States

(a) Action by Secretary to facilitate participation

The Secretary shall take necessary action to facilitate the effective participation of States in the Job Corps program, including, but not limited to, consultation with appropriate State agencies on matters pertaining to the enforcement of applicable State laws, standards of enrollee conduct and discipline, the development of meaningful work experience and other activities for enrollees, and coordination with State-operated programs.

(b) Agreements with States; payments to States

The Secretary may enter into agreements with States to assist in the operation or admin-

istration of State-operated programs which carry out the purpose of this subchapter. The Secretary may, pursuant to regulations, pay part or all of the operative or administrative costs of such programs.

(c) Approval by Governors of plans

No Job Corps center or other similar facility designed to carry out the purpose of this chapter shall be established within a State unless a plan setting forth such proposed establishment has been submitted to the Governor, and such plan has not been disapproved by him within 30 days of such submission.

(Pub. L. 93-203, title IV, § 415, Dec. 28, 1973, 87 Stat. 871.)

CODIFICATION

The phrase "carry out the purpose of this subchapter," appearing in subsec. (b), was, in the original, "carry out the purpose of this part." The translation of "part" to "subchapter" was made as the probable intent of Congress in view of the fact that subchapter IV of this chapter, of which this section is a part, is not further subdivided into parts.

§ 926. Application of provisions of Federal Law

(a) Federal employee status

Except as otherwise specifically provided in the following paragraphs of this subsection, and in section 8143(a) of title 5, enrollees in the Job Corps shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

(1) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), enrollees shall be deemed employees of the United States and any service performed by an individual as an enrollee shall be deemed to be performed in the employ of the United States.

(2) For purposes of subchapter I of chapter 81 of title 5 (relating to compensation to Federal employees for work injuries), enrollees shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except as follows:

(A) The term "performance of duty" shall not include any act of an enrollee while absent from his or her assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from such post of duty) authorized by or under the direction and supervision of the Job Corps;

(B) In computing compensation benefits for disability or death, the monthly pay of an enrollee shall be deemed that received under the entrance salary for a grade GS-2 employee, and sections 8113(a) and (b) of title 5 shall apply to enrollees; and

(C) Compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee is terminated.

(3) For purposes of the Federal tort claims provisions in title 28 enrollees shall be considered employees of the Government.

(b) Claims against United States

Whenever the Secretary finds a claim for damage to persons or property resulting from the operation of the Job Corps to be a proper charge against the United States, and it is not cognizable under section 2672 of title 28 he may adjust and settle it in an amount not exceeding $500.

(c) Uniformed services personnel strength computations

Personnel of the uniformed services who are detailed or assigned to duty in the performance of agreements made by the Secretary for the support of the Corps shall not be counted in computing strength under any law limiting the strength of such services or in computing the percentage authorized by law for any grade therein.

(Pub. L. 93-203, title IV, § 416, Dec. 28, 1973, 87 Stat. 872.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

Grade GS-2, referred to in subsec. (a)(2)(B), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal tort claims provisions in title 28, referred to in subsec. (a)(3), is the Federal Tort Claims Act, which is classified generally to section 1346(b) and to chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

§ 927. Special limitations

(a) Residential capacity of Job Corps centers

The Secretary shall not use any funds made available to carry out this subchapter for the fiscal year ending June 30, 1968, in a manner that will increase the residential capacity of Job Corps centers above forty-five thousand enrollees.

(b) Women trainees

The Secretary shall take necessary action to assure that on or before June 30, 1968, of the total number of Job Corps enrollees receiving training at least 25 per centum shall be women. The Secretary shall immediately take steps to achieve an enrollment ratio of 50 per centum women enrollees in training in the Job Corps consistent with (1) efficiency and economy in the operation of the program, (2) sound administrative practice, and (3) the socioeconomic, educational, and training needs of the population to be served.

(c) Cost restrictions

The Secretary shall take necessary action to assure that for any fiscal year the direct operating costs of Job Corps centers which have been in operation for more than nine months do not exceed $6,900 per enrollee.

(d) Ownership of studies, data, etc.

The Secretary shall take necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds in the course of the operation of any conservation or training center shall become the property of the United States.

(Pub. L. 93-203, title IV, § 417, Dec. 28, 1973, 87 Stat. 873.)

CODIFICATION

The phrase "available to carry out this subchapter", appearing in subsec. (a), was, in the original, "available to carry out this part". The translation of "part" to "subchapter" was made as the probable intent of Congress in view of the fact that subchapter IV of this chapter, of which this section is a part, is not further subdivided into parts.

§ 928. Political discrimination and political activity

(a) Inquiries, disclosures, discrimination

No officer or employee of the executive branch of the Federal Government shall make any inquiry concerning the political affiliation or beliefs of any enrollee or applicant for enrollment in the Corps. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any enrollee in the Corps, or any applicant for enrollment in the Corps because of his political affiliation or beliefs, except as may be specifically authorized or required by law.

(b) Prohibition of political activity

No officer, employee or enrollee of the Corps shall take any active part in political management or in political campaigns, except as may be provided by or pursuant to statute, and no such officer, employee, or enrollee shall use his official position or influence for the purpose of interfering with an election or affecting the result thereof. All such persons shall retain the right to vote as they may choose and to express, in their private capacities, their opinions on all political subjects and candidates. Any officer, employee, enrollee, or other Federal employee who solicits funds for political purposes from members of the Corps shall be in violation of section 602 of title 18.

(c) Violations

Whenever the United States Civil Service Commission finds that any person has violated the provisions of this section, it shall, after giving due notice and opportunity for explanation to the officer or employee or enrollee concerned certify the facts to the Secretary with specific instructions as to discipline or dismissal or other corrective actions.

(Pub. L. 93-203, title IV, § 418, Dec. 28, 1973, 87 Stat. 873.)

§ 929. Administrative provisions

(a) In carrying out the provisions of this subchapter, the Secretary shall have the same powers as the Director of the Office of Economic Opportunity under section 2942 of title 42.

(b) The provisions of section 983 of this title shall apply to this subchapter only to the extent that such provisions are consistent with the provisions of this subchapter.

(Pub. L. 93-203, title IV, § 419, Dec. 28, 1973, 87 Stat. 873; Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

REFERENCES IN TEXT

Provisions of section 2942 of title 42, relating to the powers of the Director of the Office of Economic Opportunity, referred to in subsec. (a), have been deleted by Pub. L. 93-644, § 9(a), Jan. 4, 1975, 88 Stat. 2310, which substituted provisions as to the powers of the Director of the Community Services Administration. References to the Director of the Office of Economic Opportunity now deemed to be references to the Director of the Community Services Administration, see section 2941(d)(2) of Title 42, The Public Health and Welfare.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93-567 substituted "section 703" for "section 603" which for purposes of codification has been translated as "section 983".

SUBCHAPTER V—NATIONAL COMMISSION FOR MANPOWER POLICY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 2392.

§ 951. Congressional findings and declaration of purpose

(a) The Congress finds and declares that the responsibility for the development, administration, and coordination of programs of training and manpower development generally is so diffused and fragmented at all levels of government that it has been impossible to develop rational priorities in these fields, with the result that even good programs have proved to be far less effective than could reasonably be expected. The Congress further finds that the lack of a coherent, flexible, national manpower policy reduces our prospects of solving economic and social problems which threaten fundamental national interests and objectives.

(b) Accordingly, the purpose of this subchapter is to establish a National Commission for Manpower Policy which will have the responsibility for examining these issues, for suggesting ways and means of dealing with them, and for advising the Secretary on national manpower issues.

(Pub. L. 93-203, title V, § 501, Dec. 28, 1973, 87 Stat. 874.)

§ 952. Commission established

(a) Membership

There is established a National Commission for Manpower Policy (hereinafter referred to as the "Commission") which shall consist of seventeen members selected as follows—

(1) the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Defense, the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Veternas' Affairs; and

(2) a representative of the National Advisory Council on Vocational Education created pursuant to section 2392 of title 20; and

(3) ten members broadly representative of labor, industry, commerce, education (including vocational and technical education), State and local elected officials involved with manpower programs, persons served by manpower programs and of the general public appointed by the President.

(b) Chairman; meetings

The Commission shall meet at the call of the Chairman, who shall be selected by the President and who shall be one of the ten appointed public members, but not fewer than three times a year.

(c) Director; clerical staff; utilization of other staff

The Chairman (with the concurrence of the Commission) shall appoint a Director, who shall be the chief executive officer of the Commission and shall perform such duties as are prescribed by the Chairman. The Director may appoint, with the concurrence of the Chairman and the Secretary of Labor, such clerical staff as are necessary. The Commission may utilize such staff from the Department of Labor, the Department of Health, Education, and Welfare, and such other Federal agencies as may be available to assist the Commission in carrying out its responsibilities.

(d) Acceptance, employment, and disposal of gifts and bequests

The Commission may accept in the name of the Department of Labor and employ or dispose of gifts or bequests, to carry out its responsibilities under this subchapter.

(e) Compensation

Members of the Commission who are not officers or employees of the Federal Government shall be paid compensation at a rate of up to the per diem equivalent of the rate of GS-18 when engaged in the work of the Commission, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by section 5703 of title 5 for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

(Pub. L. 93-203, title V, § 502, Dec. 28, 1973, 87 Stat. 874; Pub. L. 94-482, title II, § 203(b)(1), Oct. 12, 1976, 90 Stat. 2214.)

REFERENCE IN TEXT

GS-18, referred to in subsec. (e), is a grade of the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94-482 added subsec. (a)(2). Former subsec. (a)(2) was redesignated as (a)(3). Subsec. (a)(3). Pub. L. 94-482 redesignated former subsec. (a)(2) as (a)(3) and, as so redesignated, substituted "ten" for "eleven".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-482 effective on Oct. 1, 1977, see section 204(a)(2) of Pub. L. 94-482, set out as an Effective Date of 1976 Amendment note under section 817 of this title.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE; NATIONAL COMMISSION ON EMPLOYMENT AND UNEMPLOYMENT STATISTICS; ESTABLISHMENT

Pub. L. 94-444, § 13, Oct. 1, 1976, 90 Stat. 1483, provided that:

"(a)(1) The Congress finds and declares that—

"(A) the reliable and comprehensive measurement of employment and unemployment is vital to assessing the Nation's economic well-being and the utilization of its work force, and is an important determinant of public policies toward job creation, education, training, assistance for the jobless, and other labor market programs;

"(B) the allocation of billions of dollars of Federal funds on the basis of unemployment data is increasing, making even more crucial the timely, accurate, and uniform measurement of the labor force;

"(C) the formulation of public policies to promote the most effective use of our human resources is hindered by inadequate information on the utilization and effect of education and training programs;

"(D) in order for governmental and private sector policy decisions to have maximum effect upon reducing unemployment and strengthening the labor force, an accurate and precise system for measuring employment and unemployment and its impacts on particular segments of the potential work force is essential;

"(E) the current method of data collection and the form of its presentation, at national, regional, and subregional levels, may not fully reflect unemployment and employment trends, and may produce incomplete and, therefore, misleading conclusions, thus impairing the validity and utility of this critical economic indicator;

"(F) it is critical to retain public confidence in the procedures, concepts, and methodology of collecting, analyzing, and presenting employment and unemployment statistics; and

"(G) objectivity is a necessity in considering reform of statistical processes.

"(2) It is the purpose of this section to establish a National Commission on Employment and Unemployment Statistics to have responsibility for examining the procedures, concepts, and methodology involved in employment and unemployment statistics and suggesting ways and means of improving them.

"(b)(1) There shall be established a National Commission on Employment and Unemployment Statistics (hereinafter in this section referred to as the 'Commission') which shall consist of nine members appointed by the President, by and with the advice and consent of the Senate. Seven of the members shall be selected on the basis of their knowledge of and experience in the procedures, methodology, or use of employment and unemployment statistics, and shall be broadly representative of labor, business and finance, education and training, economics and statistics, and State and local government. Two of the members shall be selected from the general public. The membership of the Commission shall be generally representative of significant segments of the labor force, including women and minority groups. Any vacancy in the Commission shall not affect its powers as long as there continues to be at least five members; and any such vacancy may be filled in the same manner as the original appointment is made.

"(2) Except when six members of the Commission shall vote to hold an executive session for a particular purpose, the Secretary of Labor, the Secretary of Commerce, the Commissioner of Labor Statistics, the Director of the Bureau of the Census, the Director of the Office of Management and Budget, the Chairman of the National Commission for Manpower Policy, the Chairman of the Council of Economic Advisers, and a majority and a minority member each of the Joint Economic Committee, of the Committee on Labor and Public Welfare of the Senate, and of the Committee on Education and Labor of the House of Representatives, or in each case a designee, shall assist and participate in the hearings, deliberations, and other activities of the Commission on an advisory basis.

"(3) The President shall designate a Chairman from among the appointed members of the Commission.

"(4) The Chairman, with the concurrence of the Commission, shall appoint an executive director, who

shall be the chief executive officer of the Commission and shall perform such duties as are prescribed by the Chairman or the Commission. The executive director may appoint, with the concurrence of the Chairman, such professional, technical, and clerical staff as are necessary to carry out the provisions of this section. The executive director and staff shall be appointed without regard to the provisions of title 5, United States Code, governing appointments to the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate of GS–18 of the General Schedule under section 5332 of such title. The executive director, with the concurrence of the Chairman, may obtain temporary and intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. The Commission may utilize such staff, with or without reimbursement, from the Department of Labor, the Department of Commerce, and such other appropriate Federal agencies as may be available to assist the Commission in carrying out its responsibilities.

"(5) The Commission shall determine its own internal procedures, including the constituting of a quorum.

"(6) The Commission is authorized to accept and utilize voluntary and uncompensated services notwithstanding the provisions of section 665(b) of title 31, United States Code.

"(7) Members of the Commission who are not officers or employees of the Federal Government shall be paid compensation at a rate of not to exceed the per diem equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, when engaged in the work of the Commission, including traveltime; and while serving away from their homes or regular places of business, shall be allowed travel expenses including per diem in lieu of subsistence, in the same manner as such expenses are authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

"(c) The Commission shall—

"(1) identify the needs of the Nation for labor force statistics and assess the extent to which current procedures, concepts, and methodology in the collection, analysis, and presentation of such statistics constitute a comprehensive, reliable, timely, and consistent system of measuring employment and unemployment and indicating trends therein; and

"(2) conduct or provide (through contract with institutions, organizations, and individuals, or appropriate Federal or State agencies, or otherwise) for such studies, hearings, research, or other activities as it deems necessary to enable it to formulate appropriate recommendations.

The Commission or, on the authorization of the Commission, any subcommittee or members thereof, may, for the purposes of carrying out the provisions of this section, hold such hearings, take such testimony, and sit and act at such times and places as the Commission deems advisable. Any member authorized by the Commission may administer oaths or affirmations to witnesses appearing before the Commission or any subcommittee or members thereof.

"(d)(1) The Commission shall make a report of its findings and recommendations to the President and the Congress within eighteen months after the date of appointment of the first five members of the Commission.

"(2) In preparing its report, the Commission shall consider the following:

"(A) The methodology of collection of employment and unemployment data at all levels, including National, regional, State, and local statistics.

"(B) The methodology of analysis of such data, including its relevance and application.

"(C) The methodology of presentation of employment and unemployment statistics, including the dissemination, current utilization, and application of such statistics.

"(D) Alternative methods of such collection, analysis, and presentation.

"(E) The need for additional special statistical surveys (including longitudinal studies) and reports on a continuing basis.

"(F) The need for additional data and analysis on job vacancies, job turnover, job matching, discouraged workers, part-time workers, youth, minorities, women, and other labor force participants.

"(G) Accuracy and uniformity of seasonal adjustments in all categories of labor force statistics.

"(H) Methods of achieving current, accurate, and uniform employment and unemployment statistics on a State and local basis, including their use as a determinant of the allocation of Federal assistance.

"(I) The need for, and methods to obtain, data relating employment status and earnings, economic hardship, and family support obligations.

"(J) The extent to which employment and earnings data assist in determining the impact of public programs and policies upon persons who are economically disadvantaged, unemployed, or underemployed.

"(K) The availability of and need for periodic information on education and training enrollments and completions in the public and private sectors.

"(L) Statistical indicators of the relationship between education and training and subsequent employment, earnings, and unemployment experience.

"(M) The value and usefulness of other statistics regarding employment and unemployment, such as those obtained through operation of the unemployment insurance system.

"(N) The availability of and need for current and projected occupational information, particularly on a local basis, to assist youths and adults in making training, education, and career choices.

"(O) Such other matters as the Commission deems appropriate or necessary, including such matters as are suggested by the President or by the Congress that the Commission deems appropriate.

"(3) The Commission's report shall contain its findings and recommendations, including a feasible schedule for their implementation, cost estimates, and any appropriate draft regulations and legislation to implement such recommendations.

"(4) The Commission may make such interim reports or recommendations as it may deem desirable.

"(e) Upon submission of the Commission's final report, the Secretary of Labor shall take steps to ascertain the views of each affected executive agency and, within six months after the report's submission, shall make an interim report to the Congress on—

"(1) the desirability, feasibility, and cost of implementing each of the Commission's recommendations, and the actions taken or planned with respect to their implementation; and

"(2) recommendations with respect to any legislation proposed by the Commission, the need for any alternative or additional legislation to implement the Commission's recommendations, and any other proposals to strengthen and improve the measurement of employment and unemployment.

Within two years after submission of the Commission's final report, the Secretary shall submit a final report to the Congress detailing the actions taken with respect to the recommendations of the Commission, together with any further recommendations deemed appropriate.

"(f)(1) Each department, agency, and instrumentality of the Federal Government is authorized and directed to cooperate fully with the Commission in furnishing appropriate information to assist the Commission in carrying out its functions under this section.

"(2) The head of each department, agency, or instrumentality of the Federal Government is authorized to provide such support and services to the Commission, upon request of the Chairman, as may be agreed between the head of the department, agency, or instrumentality and the Chairman.

"(g) The Commission shall cease to exist one hundred and eighty days after submission of its final report as required under subsection (d)(1) of this section.

"(h)(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

"(2) Notwithstanding any other provision of law, any funds appropriated to carry out this section which are not obligated prior to the end of the fiscal year for which such funds were appropriated shall remain available for obligation during the succeeding fiscal year."

§ 953. Functions of the Commission

The Commission shall—

(1) identify the manpower goals and needs of the Nation and assess the extent to which employment and training, vocational education, institutional training, vocational rehabilitation, economic opportunity, and other programs under this chapter and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs and achieving such goals;

(2) conduct such studies, hearings, research, or other activities as it deems necessary to enable it to formulate appropriate recommendations;

(3) examine and evaluate the effectiveness of any federally assisted manpower development programs (including those assisted under this chapter), with particular reference to the contributions of such programs to the achievement of objectives sought by the recommendations under clause (2) of this section;

(4) examine and evaluate major Federal programs which are intended to (or potentially could) contribute to achieving major objectives of existing manpower and related legislation or those set forth in the recommendations of the Commission and particularly the programs which are designed (or could be designed) to develop information and knowledge about manpower problems through research and demonstration projects or to train personnel in fields (such as occupational counseling, guidance, and placement) which are vital to the success of manpower programs; and

(5)(i) identify, after consultation with the National Advisory Council on Vocational Education, the employment and training and vocational education needs of the Nation and assess the extent to which employment training, vocational education, vocational rehabilitation, and other programs assisted under this chapter and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and (ii) comment, at least once annually, on the reports of the National Advisory Council on Vocational Education, which comments shall be included in one of the reports submitted by the National Commission pursuant to this section and in one of the reports submitted by the National Advisory Council on Vocational Education pursuant to section 2392 of title 20; and

(6) evaluate and make recommendations to the Congress with respect to the report of the Secretary required under section 956 of this title, and continue to make studies of the impact of energy shortages upon manpower needs and include these findings and recommendations with respect thereto in the reports required by section 955 of this title.

(Pub. L. 93-203, title V, § 503, Dec. 28, 1973, 87 Stat. 875; Pub. L. 94-482, title II, § 203(b)(2), Oct. 12, 1976, 90 Stat. 2214.)

Amendments

1976—Pub. L. 94-482 added cl. (5). Former cl. (5) was redesignated as (6).

Effective Date of 1976 Amendment

Amendment by Pub. L. 94-482 effective on Oct. 1, 1977, see section 204(a)(2) of Pub. L. 94-482, set out as an Effective Date of 1976 Amendment note under section 817 of this title.

Report and Study of Public Service Employment Programs

Pub. L. 94-444, § 15, Oct. 1, 1976, 90 Stat. 1488, provided that:

"(a) The National Commission for Manpower Policy, established under title V of the Comprehensive Employment and Training Act of 1973 [this subchapter], shall conduct a study of the net employment effects of the public service employment programs authorized by title II and title VI of the Comprehensive Employment and Training Act of 1973 [subchapter II and VI of this chapter].

"(b) The National Commission for Manpower Policy shall prepare and submit to the Congress not later than March 31, 1978, a report on the study required by this section, together with such recommendations, including recommendations for legislation, as such Commission deems advisable.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section."

§ 954. Coordination study; report by January 31, 1975

The Commission shall conduct a study of the utilization and interrelation of programs of manpower training with closely associated programs such as those conducted under the Wagner-Peyser Act [29 U.S.C. 49 et seq.], the work incentives program under part C of title IV of the Social Security Act [42 U.S.C. 630 et seq.], and others of similar nature, with a view to determining how they could be better coordinated and more effectively combined to serve individuals, particularly at the State and local levels, and shall make a report of their findings and recommendations to the President and the Congress not later than January 31, 1975.

(Pub. L. 93-203, title V, § 504, Dec. 28, 1973, 87 Stat. 875.)

References in Text

The Wagner-Peyser Act, referred to in text, is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified principally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables volume.

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title IV of the Social Security Act is classified generally to part C (§ 630 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

§ 955. Reports to President and Congress

The Commission shall make at least annually a report of its findings and recommendations to

the President and the Congress, and the first such report shall be transmitted not later than September 1, 1974. The Commission may make such interim reports or recommendations to the Secretary of Labor or to the heads of other Federal departments and agencies, and in such form, as it may deem desirable.

(Pub. L. 93-203, title V, § 505, Dec. 28, 1973, 87 Stat. 875.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 953 of this title; title 20 section 2392.

§ 956. Energy study; report by March 31, 1974

The Secretary shall, immediately upon enactment of this chapter, make a study of the impact of energy shortages, including fuel rationing, upon manpower needs. The Secretary shall make a report of his findings and recommendations thereon to the Congress and to the Commission not later than March 31, 1974.

(Pub. L. 93-203, title V, § 506, Dec. 28, 1973, 87 Stat. 876.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 953 of this title.

SUBCHAPTER VI—EMERGENCY JOB PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 982 of this title; title 42 sections 3056a, 6723.

§ 961. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal year 1976, and for the period beginning July 1, 1976, and ending September 30, 1976, and for fiscal year 1977, for carrying out the provisions of this subchapter.

(Pub. L. 93-203, title VI, § 601, as added Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845; and amended Pub. L. 94-444, § 2, Oct. 1, 1976, 90 Stat. 1476.)

AMENDMENTS

1976—Pub. L. 94-444 substituted provisions authorizing appropriations of such sums as may be necessary for fiscal year 1976, and for the period beginning July 1, 1976, and ending Sept. 30, 1976, and for fiscal year 1977 for provisions authorizing appropriations of $2,500,000,000 for fiscal year 1975 to remain available for obligation until Dec. 31, 1975 if not obligated prior to the end of such fiscal year.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 963 of this title.

§ 962. Financial assistance

(a) Transitional employment

The Secretary shall enter into arrangements with eligible applicants in accordance with the provisions of this subchapter in order to make financial assistance available for the purpose of providing transitional employment for unemployed and underemployed persons in jobs providing needed public services, and training and manpower services related to such employment which are otherwise unavailable, and enabling such persons to move into employment not supported under this chapter.

(b) Percentage of funds for expenditure for wages, employment benefits, and administrative costs

Notwithstanding the provisions of section 848(a)(7) of this title, not less than 85 per centum of the funds allocated in accordance with the provisions of this subchapter which are used by an eligible applicant for public service employment programs under this subchapter shall be expended only for wages and employment benefits to persons employed in public service jobs pursuant to this subchapter, and the remainder of such funds may be used for administrative costs, including rental costs (within such reasonable limitations as the Secretary may prescribe with respect to the rental of space), and to obtain necessary supplies, equipment, and materials.

(c) Subchapter II provisions applicable

The provisions of section 844(d) and sections 845 through 851 of this title shall apply to financial assistance under this subchapter.

(d) Preferred consideration of certain unemployed persons

In filling public service jobs with financial assistance under this subchapter, eligible applicants shall give preferred consideration, to the maximum extent feasible and consistent with other provisions of this chapter to unemployed persons who have exhausted unemployment insurance benefits, to unemployed persons who are not eligible for unemployment insurance benefits (except for persons lacking work experience), and to unemployed persons who have been unemployed for fifteen or more weeks.

(e) "Eligible applicants" defined

For purposes of this section, the term "eligible applicants" means prime sponsors qualified under subchapter I of this chapter and Indian tribes, bands, and groups qualified under section 872(c)(1) of this title.

(Pub. L. 93-203, title VI, § 602, as added Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, and amended Pub. L. 94-444, §§ 3(a)(2), 8(a), Oct. 1, 1976, 90 Stat. 1476, 1482.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-444, § 3(a)(2), substituted "85 per centum" for "90 per centum" and added requirement that the remainder of the allocated funds may be used for administrative costs and to obtain necessary supplies, equipment, and materials.

Subsec. (e). Pub. L. 94-444, § 8(a), substituted "Indian tribes, bands, and groups qualified under section 872(c)(1) of this title" for "Indian tribes on Federal or State reservations".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 963, 964 of this title.

§ 963. Allotment of funds

(a) Reservation of funds for Indians and allocation based upon unemployment, substantial unemployment, and relative excess number of unemployed; "excess number" defined.

(1) The Secretary shall reserve an amount equal to not less than 2 per centum of the amounts appropriated under section 961 of this title for any fiscal year to enable Indian tribes,

bands, and groups which are designated as eligible applicants under this subchapter to carry out public service employment programs.

(2) Not less than 90 per centum of the remainder of the amounts appropriated under section 961 of this title for any fiscal year shall be allotted among eligible applicants by the Secretary in accordance with the provisions of this subsection.

(3)(A) Fifty per centum of the amount allotted under this subsection shall be allotted among eligible applicants in proportion to the relative number of unemployed persons who reside in areas within the jurisdiction of each such applicant as compared to the number of unemployed persons who reside in all such areas in all the States.

(B) Twenty-five per centum of the amount allotted under this subsection shall be allotted among eligible applicants in accordance with the number of unemployed persons residing in areas of substantial unemployment (as defined in section 844(c) of this title) within the jurisdiction of the applicant compared to the number of unemployed persons residing in all such areas.

(C) Twenty-five per centum of the amount allotted under this subsection shall be allotted among eligible applicants on the basis of the relative excess number of unemployed persons who reside within the jurisdiction of the applicant as compared to the total excess number of unemployed persons who reside within the jurisdiction of all eligible applicants. For purposes of this subparagraph, the term "excess number" means (i) the number which represents unemployed persons in excess of 4½ per centum of the labor force in the jurisdiction of the applicant in whose jurisdiction such persons reside or (ii), in the case of an applicant which is a State, the term "excess number" means such number as defined in clause (i) or the number which represents unemployed persons in excess of 4½ per centum of the labor force in areas eligible for assistance under subchapter II of this chapter located in the geographical area served by such State prime sponsor under subchapter I or II of this chapter, whichever is greater.

(b) Amount available as Secretary deems appropriate; use of funds to assure continuation of public service employment activities

The remainder of the amount appropriated under section 961 of this title shall be available to the Secretary for financial assistance under section 962 of this title as the Secretary deems appropriate to carry out the purposes of this subchapter, taking into account changes in rates of unemployment. In distributing funds available for the discretionary use of the Secretary of Labor under this subsection, the Secretary is authorized to utilize such funds to assure a continuation of public service employment activities supported under this chapter. In distributing such funds under this subsection to prime sponsors, the Secretary shall base allocations upon the public service employment activities sustained within the jurisdiction of each unit of general local government within the area served by each such prime sponsor in accordance with subsection (c) of this section.

(c) "Jurisdiction" defined

For purposes of determining allocations under this section, the term "jurisdiction" includes the jurisdiction of each unit of general local government as described in section 812(a)(2) of this title whether or not such unit has entered into a combination of units of general local government for purposes of section 812(a)(3) or section 812(a)(4) of this title.

(d) Publication in Federal Register

Whenever the Secretary allocates any funds available under subsection (b) of this section through a distribution based upon a formula, he shall, not later than 30 days prior to such allocation, publish in the Federal Register the specific formula upon which such distribution is based, the rationale behind the selection of the formula, and the proposed distribution for each prime sponsor. After consideration of comments received under the preceding sentence, the Secretary shall publish final allocations.

(Pub. L. 93-203, title VI, § 603, as added Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1846, and amended Pub. L. 94-444, §§ 4(b), 8(b), (c), 14(b), Oct. 1, 1976, 90 Stat. 1477, 1482, 1487.)

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-444, 8(b), added subsec. (a)(1). Former subsec. (a)(1) redesignated (a)(2).

Subsec. (a)(2). Pub. L. 94-444, § 8(b), (c), redesignated subsec. (a)(1) as (a)(2), and as so redesignated, inserted "of the remainder" following "per centum". Former subsec. (a)(2) redesignated (a)(3).

Subsec. (a)(3). Pub. L. 94-444, § 8(b), redesignated subsec. (a)(2) as (a)(3).

Subsec. (b). Pub. L. 94-444, § 4(b), added provisions authorizing Secretary of Labor to utilize discretionary funds to assure a continuation of public service employment activities and requiring Secretary to base allocation on public service employment activities sustained in each unit of local government served by prime sponsor.

Subsec. (d). Pub. L. 94-444, § 14(b), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 964 of this title.

§ 964. Special provision for areas of excessively high unemployment and for expansion of job opportunities

(a) Job opportunities under section 874(a)(3) to (6) programs

Funds allocated from appropriations for carrying out this subchapter to any eligible applicant, which certifies to the Secretary that the application of the provisions of this section is necessary in order to provide sufficient job opportunities in the area served by such eligible applicant, may be used for making payments to public employers to expand the provision of job opportunities of the type described in paragraphs (3), (4), (5), and (6) of section 874(a) of this title.

(b) Public service employment programs; programs for persons unemployed 15 days; community capital improvement projects

In accordance with the provisions of subsection (c) of this section, and notwithstanding the provisions of sections 962(a) and (b) of this title, funds allotted under section 963 of this title to eligible applicants may be used for—

(1) public service employment programs without regard to the provisions of section 845(b), 845(c)(4), 845(c)(6), 845(c)(16), 845(c)(19), and 848(a)(6) of this title.

(2) providing employment for persons who have been unemployed for at least 15 days without regard to the provision of section 845(a) of this title relating to 30 days of unemployment, if the applicant certifies that the hiring of an individual will not violate the provisions of section 845(c)(8) of this title.

(3) payment of wages (at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), for unemployed and underemployed persons as employees of public employers in jobs on community capital improvement projects which would not otherwise be carried out, including the rehabilitation, alteration, or improvement of public buildings, roads and other public transportation facilities, health and education facilities, and other facilities for the improvement of the community in which the project is or will be located, and including construction, rehabilitation, alteration, or improvement of water and waste disposal facilities in communities having populations of 10,000 individuals or less which are outside the boundaries of a Standard Metropolitan Statistical Area (as defined by the Bureau of the Census).

(c) Unemployment areas eligible for subsection (b) programs

The provisions of subsection (b) of this section shall apply to any area having an unemployment rate in excess of 7 per centum, and to any area, without regard to the rate of unemployment of such area, if such area is served by a prime sponsor which qualifies under section 812(a)(4) or section 812(a)(5) of this title or is in an area which is eligible for assistance under subchapter II of this chapter and which is served by a State prime sponsor, and if the prime sponsor for such area certifies to the Secretary that the application of such provisions is necessary in order to provide sufficient job opportunities, and gives public notice of such certification.

(Pub. L. 93–203, title VI, § 604, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1846.)

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in subsec. (b)(3), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables volume.

§ 965. Expenditure of funds

(a) Funds obligated for the purposes of providing public service employment under this subchapter may be utilized by prime sponsors for projects and activities, including projects and activities to be carried out by project applicants as defined in section 981(a)(15) of this title, planned to extend over a twelve-month period from the commencement of any such project or activity.

(b) No funds for public service employment programs under this chapter may be used to provide public services, through a private or nonprofit organization or institution, which are customarily provided by a State, a political subdivision, or a local educational agency in the area served by the project.

(Pub. L. 93–203, title VI, § 605, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1847, and amended Pub. L. 94–444, § 5(b)(3), (d), Oct. 1, 1976, 90 Stat. 1480.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–444, § 5(b)(3), (d), designated existing provisions as subsec. (a), and as so designated, inserted ", including projects and activities to be carried out by project applicants as defined in section 981(a)(15) of this title," following "projects and activities".

Subsec. (b). Pub. L. 94–444, § 5(d), added subsec. (b).

§ 966. Reallocation of funds; publication in Federal Register; priorities

The Secretary is authorized to make such reallocations as he deems appropriate of any amount of any allocation under this subchapter to the extent that the Secretary determines that an eligible applicant will not be able to use such amount within a reasonable period of time. Any such amount may be reallocated only if the Secretary has provided thirty days' advance notice to the prime sponsor for such area and to the Governor of the State of the proposed reallocation, during which period of time the prime sponsor and the Governor may submit comments to the Secretary. After considering any comments submitted during such period of time, the Secretary shall notify the Governor and affected prime sponsors of any decision to reallocate funds, and shall publish any such decision in the Federal Register. In reallocating any such funds, the Secretary shall give priority first to other areas within the same State and then to areas within other States, taking into account the number of eligible unemployed individuals (as described in section 968 of this title) in such areas.

(Pub. L. 93–203, title VI, § 606, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1847, and amended Pub. L. 94–444, § 5(b)(2), Oct. 1, 1976, 90 Stat. 1479.)

AMENDMENTS

1976—Pub. L. 94–444 substituted requirement that the Secretary, in reallocating funds, shall give priority first to other areas in the same State and then to areas in other States taking into account the number of eligible unemployed individuals for requirement that funds shall be reallocated to areas within same State.

§ 967. Reservation of funds; employment of long-term unemployed, low-income persons

(a) Reservation of funds for subchapter II public service jobholders

Each prime sponsor, in accordance with regulations which the Secretary shall prescribe, shall reserve out of any allocation which it receives under this subchapter from appropriations for fiscal year 1977 such amount as will

be sufficient, when added to funds available for use under subchapter II of this chapter during such fiscal year, to enable the prime sponsor to sustain throughout such fiscal year the number of public service jobholders supported under this subchapter and subchapter II of this chapter on June 30, 1976.

(b) Funds for public service jobs for eligible unemployed under section 968

The amount of each prime sponsor's allocation under this subchapter remaining after funds are reserved for the purpose described in subsection (a) of this section shall be used to provide public service jobs for eligible unemployed persons (as described in section 968 of this title) in projects and activities carried out by project applicants (as defined in section 981(a)(15) of this title). Such projects and jobs shall not exceed twelve months in duration and shall provide employment consistent with the aim of maintaining average federally supported wage rates for public service jobholders (adjusted on a regional and area basis) as set forth under section 849(b) of this title.

(c) Vacancies

Vacancies occurring after June 30, 1976, in jobs supported under this subchapter and the Emergency Supplemental Appropriations Act of 1976 (Public Law 94-266) to which subsection (a) of this section is applicable shall be filled as follows:

(1) Fifty per centum of such vacancies shall be filled in accordance with the provisions of section 968 of this title.

(2) Fifty per centum of such vacancies shall be filled in accordance with the provisions of this subchapter (other than the provisions of this section, except for this paragraph, and of sections 968 and 969 of this title) except that a prime sponsor may give preference in filling such vacancies to unemployed public health and safety personnel in public health and safety positions for which they are qualified.

(Pub. L. 93-203, title VI, § 607, as added Pub. L. 94-444, § 5(a), Oct. 1, 1976, 90 Stat. 1477.)

REFERENCES IN TEXT

The Emergency Supplemental Appropriations Act of 1976 (Public Law 94-266), referred to in subsec. (c), is Pub. L. 94-266, Apr. 15, 1976, 90 Stat. 362, which was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 968, 969, 982 of this title.

§ 968. Eligibility of long-term unemployed, low-income persons

(a) Eligibility requirements

In filling public service jobs with financial assistance available for the purposes of subsections (b) and (c)(1) of section 967 of this title, each prime sponsor shall determine that any person to be employed in any such public service job (1) is an individual—

(A) who has been receiving unemployment compensation for fifteen or more weeks;

(B) who is not eligible for such benefits and has been unemployed for fifteen or more weeks;

(C) who has exhausted unemployment compensation benefits; or

(D) who is, or whose family is, receiving aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.];

and (2) is not a member of a household which has current gross family income, adjusted to an annualized basis (exclusive of unemployment compensation and other public payments which such individual will be disqualified from receiving by reason of employment under this subchapter at a rate exceeding 70 per centum of the lower living standard income level.

(b) Lower living standard income level

For purposes of this section, the term "lower living standard income level" means that income level (adjusted for regional and metropolitan and urban and rural differences and family size) determined annually by the Secretary based upon the most recent "lower living standard budget" issued by the Bureau of Labor Statistics of the Department of Labor.

(c) Equitable allocation of funds to eligible persons

In filling public service jobs, each prime sponsor shall take reasonable steps, which such sponsor shall determine, to insure that funds provided in accordance with subsections (b) and (c)(1) of section 967 of this title shall be equitably allocated for jobs among the categories of eligible persons described in subsection (a) of this section in light of the composition of the population of unemployed eligible persons served by the prime sponsor.

(d) Consideration of job applicants household support obligations

In providing public service jobs and determining hours of work for eligible persons with financial assistance provided in accordance with subsections (b) and (c)(1) of section 967 of this title, each prime sponsor shall take into account the household support obligations of the men and women applying for such jobs, and shall give special consideration to such alternative working arrangements as flexible hours of work, shared time, and part-time jobs, for eligible persons, particularly for parents of young children and for older persons.

(e) Notification of available public service jobs

The Secretary, through the affiliated State employment security agencies, shall take steps to inform the receipients of unemployment compensation benefits of any available public service jobs for which such recipients may be eligible, but such notification shall clearly state that such notification is designed only to inform, and in no way to coerce, such recipients with respect to the availability of such jobs.

(Pub. L. 93-203, title VI, § 608, as added Pub. L. 94-444, § 5(a), Oct. 1, 1976, 90 Stat. 1478.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 966, 967 of this title.

§ 969. Approval of project applications; submission and consideration of comments and recommendations

(a) In order for a project application submitted by a project applicant to be approved by the prime sponsor for financial assistance provided in accordance with subsection (b) of section 967 of this title, copies of such application shall have been submitted at the time of such application to the prime sponsor's planning council established under section 814 of this title, for the purpose of affording such council an opportunity to submit comments and recommendations with respect to that application to the prime sponsor. No member of a prime sponsor's planning council shall cast a vote on any matter in connection with a project in which that member (or any organization with which that member is associated) has a direct interest.

(b) Consistent with procedures established by the prime sponsor in accordance with regulations which the Secretary shall prescribe, the prime sponsor shall not disapprove a project application submitted by a project applicant unless it has first considered any comments and recommendations made by the prime sponsor's planning council and unless it has provided such applicant and the planning council with a written statement of its reasons for such disapproval.

(Pub. L. 93-203, title VI, § 609, as added Pub. L. 94-444, § 5(a), Oct. 1, 1976, 90 Stat. 1479.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 967 of this title.

SUBCHAPTER VII—GENERAL PROVISIONS

§ 981. Definitions

(a) As used in this chapter, the term—

(1) "Community-based organizations" means organizations which are representative of communities or significant segments of the communities and which provide manpower services (for example, Opportunities Industrialization Centers, Jobs for Progress, Mainstream, and Community Action Agencies).

(2) "Governor" means the chief executive of any State.

(3) "Health care" includes, but is not limited to, preventive and clinical medical treatment, family planning services, nutrition services, and appropriate psychiatric, psychological, and prosthetic services, to the extent any such treatment or services are necessary to enable the receipient of manpower services to obtain or retain employment.

(4) "Low-income level" means $7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship to $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

(5) "Manpower allotment" means sums received by a State or area under subchapter I of this chapter for any fiscal year (or, where applicable, under title II of the Manpower Development and Training Act of 1962 [42 U.S.C. 2581 et seq.], and part B of title I of the Economic Opportunity Act of 1964 [42 U.S.C. 2731 et seq.]).

(6) "Offender" means any adult or juvenile who is confined in any type of correctional institution and also includes any individual or juvenile assigned to a community based facility or subject to pretrial, probationary, or parole or other stages of the judicial correctional or probationary process where manpower training and services may be beneficial, as determined by the Secretary, after consultation with judicial, correctional, probationary, or other appropriate authorities.

(7) "Public service" includes, but is not limited to, work, including part-time work for individuals who are unable, because of age, handicap, or other factors, to work full time, in such fields as environmental quality, health care, education, child care, public safety, crime prevention and control, prison rehabilitation, transportation, recreation, maintenance of parks, streets, and other public facilities, solid waste removal, pollution control, housing and neighborhood improvements, rural development, conservation, beautification, veterans outreach, and other fields of human betterment and community improvement.

(8) "Secretary" means the Secretary of Labor.

(9) "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(10) "Unit of general local government" means any city, municipality, county, town, township, parish, village or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers.

(11) "Underemployed persons" means—

(A) persons who are working part-time but seeking full-time work;

(B) persons who are working full-time but receiving wages below the poverty level determined in accordance with criteria as established by the Director of the Office of Management and Budget.

(12) "Unemployed persons" means—

(A) persons who are without jobs and who want and are available for work; and

(B) except for purposes of sections 813 and 842 of this title, adults who or whose families receive supplemental security income or money payments pursuant to a State plan approved under title I [42 U.S.C. 301 et seq.], IV [42 U.S.C. 601 et seq.], X [42 U.S.C. 1201 et seq.] of the Social Security Act or would, as defined in regulations to be issued by the Secretary, be eligible for such payments but for the fact that both parents are present in the home (1) who are determined by the Secretary of Labor, in consultation with the Secretary of Health, Education, and Welfare, to be available for work, and (2) who are either (i) persons without jobs, or (ii) persons working in jobs providing insufficient income to enable such per-

sons and their families to be self-supporting without welfare assistance;

and the determination of whether persons are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining persons as unemployed, but such criteria shall not be applied differently on account of a person's previous employment.

(13) "Wagner-Peyser Act" [29 U.S.C. 49 et seq.] means "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (48 Stat. 113), as amended.

(14) "veterans outreach" means the veterans outreach services program carried out under subchapter IV of chapter 3 of title 38 with full utilization of veterans receiving educational assistance or vocational rehabilitation under chapter 31 or 34 of such title 38.

(15) "project applicants" includes States and agencies thereof, units of general local government and agencies thereof or combinations or associations of such governmental units when the primary purpose of such combinations or associations is to assist such governmental units to provide public services, special purpose political subdivisions having the power to levy taxes and spend funds or serving such special purpose within an area served by one or more units of general local government, local educational agencies as defined in section 881(f) of title 20, institutions of higher education as defined in section 1141(a) of title 20, community-based organizations as defined in paragraph (1) of this subsection, community development corporations, nonprofit groups and organizations serving Indians or Native Hawaiians, and other nonprofit private organizations or institutions engaged in public service.

(b) As used in section 848(c) of this title, the term "area" means—

(1) where the applicant is an eligible unit of government or an Indian tribe, that geographical area over which the applicant exercises general political jurisdiction, or

(2) where the applicant is a public agency or institution which is a subdivision of an eligible unit of government, that geographical area over which such unit of government exercises general political jurisdiction.

(Pub. L. 93-203, title VII, § 701, formerly title VI, § 601, Dec. 28, 1973, 87 Stat. 876, renumbered and amended Pub. L. 93-567, title I, §§ 101, 107(a)-(c), Dec. 31, 1974, 88 Stat. 1845, 1849; Pub. L. 94-444, § 5(b)(1), Oct. 1, 1976, 90 Stat. 1479.)

REFERENCES IN TEXT

The Manpower Development and Training Act of 1962, referred to in subsec. (a)(5), is Pub. L. 87-415, Mar. 15, 1962, 76 Stat. 23, as amended. Title II of the Act was classified generally to subchapter II (§ 2581 et seq.) of chapter 30 of Title 42, The Public Health and Welfare, and together with the rest of the Act was repealed, effective with respect to fiscal years after June 30, 1974, by section 714, formerly section 614, of Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 883, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, which is set out as a "Repeal of Predecessor Programs; Availability of Unexpended Appropriations" note under section 801 of this title. For complete classification of this Act to the Code prior to repeal, see Tables volume.

The Economic Opportunity Act of 1964, referred to in subsec. (a)(5), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508. Part B of Title I of the Act was classified generally to part B (§ 2731 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare, and was repealed, effective with respect to fiscal years after June 30, 1974, by section 714, formerly section 614, of Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 883, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, which is set out as a "Repeal of Predecessor Programs; Availability of Unexpended Appropriations" note under section 801 of this Title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 42 and Tables volume.

The Social Security Act, referred to in subsec. (a)(12)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles I, IV, X, and XVI of the Social Security Act are classified generally to subchapters I (§ 301 et seq.), IV (§ 601 et seq.), X (§ 1201 et seq.), and XVI (§ 1381 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

The Wagner-Peyser Act, referred to in subsec. (a)(13), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified principally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (a)(15). Pub. L. 94-444 added subsec. (a)(15).

1974—Subsec. (a)(7). Pub. L. 93-567, § 107(a), (b), defined "public service" to include child care and part-time work for individuals who are unable because of age, handicap, or other factors to work full time.

Subsec. (a)(14). Pub. L. 93-567, § 107(c), added par. (14).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 965, 967 of this title.

§ 982. Legal authority

(a) Publication of rules, regulations and guidelines

The Secretary may, in accordance with chapter 5 of title 5, prescribe such rules, regulations, guidelines, and other published interpretations under this chapter as he deems necessary. Rules, regulations, guidelines and other published interpretations or orders may include adjustments authorized by section 4214 of title 42. For purposes of chapter 5 of title 5 any condition or guideline for receipt of financial assistance shall be deemed a rule to which section 553 of title 5 applies. All such rules, regulations, guidelines, and other published interpretations or orders under this chapter shall be published in the Federal Register at least thirty days prior to their effective date. Copies of all such rules, regulations, guidelines, and other published interpretations or orders shall be transmitted to the appropriate committees of the Congress at the same time and shall contain with respect to each material provision of such rules, regulations, guidelines, and other published interpretations or orders, citations to the particular substantive section of law which is the basis therefor.

(b) Grants, contracts, agreements, procedures, and payments

The Secretary may make such grants, contracts, or agreements, establish such procedures (subject to such policies, rules, and regulations as he may prescribe), and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend funds made available under this chapter, as he may deem necessary to carry out the provisions of this chapter, including (without regard to the provisions of section 4774(d) of title 10) expenditures for construction, repairs, and capital improvements, and including necessary adjustments in payments on account of overpayments or underpayments. The Secretary may also withhold funds otherwise payable under this chapter, but only in order to recover any amounts expended in the current or immediately prior fiscal year in violation of any provision of this chapter or any term or condition of assistance under this chapter.

(c) Quotas and limitations

The Secretary shall not, by regulation or otherwise, impose any quota or limitation on the number or percentage of persons hired under subchapter II or VI, or both, of this chapter, who were former employees of public employers under this chapter and who held jobs supported under subchapter II or VI of this chapter on June 30, 1976, or who are hired to fill vacancies under the provisions of section 967(c)(2) of this title. Any person who, between June 30, 1976, and the date of enactment of this Act, was laid off from a job supported under subchapter II or VI of this chapter by reason of such a quota or limitation may be reinstated by the prime sponsor without regard to the provisions of section 967(c) of this title. Nothing in this subsection shall be construed to relieve any prime sponsor from complying with section 845(c)(8) of this title.

(Pub. L. 93-203, title VII, § 702, formerly title VI, § 602, Dec. 28, 1973, 87 Stat. 877, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, and amended Pub. L. 94-444, § 5(c), Oct. 1, 1976, 90 Stat. 1480.)

REFERENCES IN TEXT

Section 4774(d) of title 10, referred to in subsec. (b), has been redesignated as entirety of section 4774 by Pub. L. 93-166, title V, § 509(c), Nov. 29, 1973, 87 Stat. 677.

The date of enactment of this Act, referred to in subsec. (c), probably means the date of enactment of Pub. L. 94-444, approved on Oct. 1, 1976.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-444 added subsec. (c).

§ 983. Conditions applicable to all programs

The Secretary shall not provide financial assistance for any program under this chapter unless—

(1) the grant, contract, or agreement with respect thereto specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any program participant or any applicant for participation in such program because of race, creed, color, national origin, sex, age, political affiliation, or beliefs;

(2) such program does not involve political activities;

(3) participants in the program will not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship;

(4) conditions of employment or training will be appropriate and reasonable in the light of such factors as the type of work, geographical region and proficiency of the participant;

(5) appropriate standards for the health, safety and other conditions applicable to the performance of work and training on any project are established and will be maintained;

(6) appropriate workmen's compensation protection will be provided to all participants;

(7) the program will not result in the displacement of employed workers or impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed;

(8) persons shall not be referred for training in an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities available in that occupation;

(9) training and related services under any such program are designed, to the maximum extent practicable, consistent with every individual's fullest capabilities, to lead to employment opportunities enabling participants to become economically self-sufficient;

(10) no person shall be referred for training authorized under paragraph (3) or (4) of section 811 of this title unless the Secretary or the prime sponsor, as appropriate, shall have determined that there is a reasonable expectation of employment for such person in the occupation for which he is being trained;

(11) funds will be used to supplement, to the extent practicable, the level of funds that would otherwise be made available from non-Federal sources for the purpose of planning and administration of programs within the scope of this chapter and not to supplant such other funds;

(12) the applicant will make such reports, in such form and containing such information as the Secretary may from time to time require, and will keep such records and afford such access thereto as the Secretary may find necessary to assure that funds are being expended in accordance with the provisions of this chapter;

(13) the program will, to the maximum extent feasible, contribute to the occupational development or upward mobility of individual participants;

(14) the program has adequate internal administrative controls, accounting requirements, personnel standards, evaluation procedures, availability of inservice training and technical assistance programs, and other policies as may be necessary to promote the effective use of funds; and

(15) the program makes appropriate provision for the manpower needs of youths in the area to be served.

(Pub. L. 93-203, title VII, § 703, formerly title VI, § 603, Dec. 28, 1973, 87 Stat. 878, renumbered and amended Pub. L. 93-567, title I, §§ 101, 107(d), Dec. 31, 1974, 88 Stat. 1845, 1849.)

AMENDMENTS

1974—Par. (1). Pub. L. 93-567 required provision against age discrimination.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 929 of this title.

§ 984. Special provisions

(a) Limitation on training programs in jobs requiring no prior skill or training

No authority conferred by this chapter shall be used to enter into arrangements for, or otherwise establish, any training programs in the lower wage industries in jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high, or to assist in relocating establishments from one area to another. Such limitations on relocation shall not prohibit assistance to a business entity in the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary of Labor finds that assistance will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations, unless he has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(b) Family planning services

Acceptance of family planning services provided to trainees shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to eligibility for or receipt of any benefit under the program.

(c) Evaluation of programs by non-governmental individual, institution or organization

No non-governmental individual, institution, or organization shall evaluate any program under this chapter if that individual or such institution or organization is associated with that program as a consultant, technical adviser, or in any similar capacity.

(d) Public disclosure of financial records

Financial records of a prime sponsor relating to public service employment programs assisted under this chapter and records of the names, addresses, positions, and salaries of all persons employed in public service jobs assisted under this chapter shall be maintained and made available to the public.

(e) Limitation on expenditure of funds allocated under this chapter

Notwithstanding any other provision of law, funds allocated by a prime sponsor or an Indian tribe, band, or group for the employment of individuals under this chapter may be expended in conjunction with funds from any other public or private source, but funds allocated under this chapter may only be expended in accordance with the requirements of this chapter.

(f) Employment and training services in connection with weatherization projects

Notwithstanding any other provision of law, employment and training services furnished under this chapter in connection with weatherization projects authorized under section 2809(a)(12) of title 42 may include work on such projects for the near poor, including families having incomes which do not exceed 125 per centum of the poverty line as established by section 2971d of title 42.

(Pub. L. 93-203, title VII, § 704, formerly title VI, § 604, Dec. 28, 1973, 87 Stat. 879, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, and amended Pub. L. 94-444, §§ 3(b), 9, 11, Oct. 1, 1976, 90 Stat. 1476, 1482, 1483.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-444, § 3(b), added subsec. (d).

Subsec. (e). Pub. L. 94-444, § 9(a), added subsec. (e).

Subsec. (f). Pub. L. 94-444, § 11, added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 818 of this title.

§ 985. Reports

(a) Reports and recommendations to the President by the Secretary

The Secretary shall make such reports and recommendations to the President as he deems appropriate pertaining to employment and occupational requirements, resources, use, and training, and his recommendations for the succeeding fiscal year, and the President shall transmit to the Congress within sixty days after the beginning of each regular session a report pertaining to manpower requirements, resources, utilization, and training.

(b) Reports to Congress by Secretary and Secretary of Health, Education, and Welfare

The Secretary and the Secretary of Health, Education, and Welfare shall report to the Congress on the extent to which community colleges, area vocational and technical schools and other vocational educational agencies and institutions, and vocational rehabilitation agencies are being utilized to carry out training programs supported in whole or in part from provisions of this chapter and related Acts, the extent to which administrative steps have been taken and are being taken to encourage the use of such facilities and institutions and agencies in the carrying out of the provisions of this chapter and any further legislation that may be required to assure effective coordination and utilization of such facilities and agencies to the end that all federally supported employment and training, vocational education, and vocational rehabilitation programs can more effectively accomplish their objectives of providing employment and training opportunities to all persons needing occupational training.

(c) Report to Congress by Secretary concerning summer job programs for disadvantaged youths

The Secretary shall transmit to the Congress at the earliest appropriate date, but not later than March 1, of each calendar year a report setting forth a description of summer programs providing jobs for economically disadvantaged

youth to begin in June of such year, including the number of opportunities in public and private agencies or organizations that will be provided under section 874(a)(3) of this title or in the case of the summer of 1974 under transitional provisions spelled out in section 3(c) of Public Law 93–203, and a statement as to the total number of such persons who would be eligible for such programs, together with his recommendations, if any, for supplemental appropriations for such programs.

(d) Compilation and maintenance of information on unemployment among offenders

The Secretary, through the Bureau of Labor Statistics, shall annually compile and maintain information on the incidence of unemployment among offenders and shall publish the results of the information obtained pursuant to this subsection in the report required under subsection (a) of this section.

(e) Report to President and Congress by Chairman of United States Civil Service Commission

The Chairman of the United States Civil Service Commission, in consultation with the Secretary, shall report to the President and to the Congress no later than six months after December 28, 1973, on the extent to which and manner in which employment opportunities for offenders may be increased in the Federal service, with special reference to the criteria used in determining the suitability of offenders for Federal employment, including such recommendations for additional legislation as they deem advisable.

(f) Reports by prime sponsors

Each prime sponsor shall prepare for the Secretary, and make available,[1] to the public, a report on its activities under the chapter, including a detailed comparison of program performance with approved plan.

(Pub. L. 93–203, title VII, § 705, formerly title VI, § 605, Dec. 28, 1973, 87 Stat. 879, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

REFERENCES IN TEXT

Section 3(c) of Pub. L. 93–203, referred to in subsec. (c), is set out as a Transitional Provisions note under section 801 of this title.

§ 986. Labor standards

All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating of projects, buildings, and works which are federally assisted under this chapter, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Davis-Bacon Act, as amended. (40 U.S.C. 276a–276a–5). The Secretary shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

(Pub. L. 93–203, title VII, § 706, formerly title VI, § 606, Dec. 28, 1973, 87 Stat. 880, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

[1] The comma appears in the original.

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in text, is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to section 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables volume.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

§ 987. Acceptance of gifts

The Secretary is authorized, in carrying out his functions and responsibilities under this chapter, to accept in the name of the Department, and employ or dispose of in furtherance of the purposes of this chapter, or any subchapter thereof, an unconditional gift of any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise; and to accept voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of title 31.

(Pub. L. 93–203, title VII, § 707, formerly title VI, § 607, Dec. 28, 1973, 87 Stat. 880, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

§ 988. Utilization of services and facilities

(a) In addition to such other authority as he may have, the Secretary is authorized, in the performance of his functions under this chapter, and to the extent permitted by law, to utilize the services and facilities of departments, agencies, and establishments of the United States. The Secretary is also authorized to accept and utilize the services and facilities of the agencies of any State or political subdivision of a State, with their consent.

(b) The Secretary shall carry out his responsibilities under this chapter through the utilization, to the extent appropriate, of all resources for skill development available in industry, labor, public and private educational and training institutions, vocational rehabilitation agencies, and other State, Federal, and local agencies, and other appropriate public and private organizations and facilities, with their consent.

(Pub. L. 93–203, title VII, § 708, formerly title VI, § 608, Dec. 28, 1973, 87 Stat. 881, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

§ 989. Interstate agreements

In the event that compliance with provisions of this chapter would be enhanced by cooperative agreements between States, the consent of Congress is hereby given to such States to enter into such compacts and agreements to facilitate such compliance, subject to the approval of the Secretary.

(Pub. L. 93–203, title VII, § 709, formerly title VI, § 609, Dec. 28, 1973, 87 Stat. 881, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1945.)

§ 990. Political activities prohibited

The Secretary shall not provide financial assistance for any program under this chapter

which involves political activities; and neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be, in any way or to any extent, engaged in the conduct of political activities in contravention of chapter 15 of Title 5.

(Pub. L. 93-203, title VII, § 710, formerly title VI, § 610, Dec. 28, 1973, 87 Stat. 881, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

§ 991. Nondiscrimination

(a) Prohibition of discrimination

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter.

(b) Notification to prime sponsor or eligible applicant of noncompliance and request for compliance; procedure upon refusal of compliance

Whenever the Secretary determines that a prime sponsor or eligible applicant has failed to comply with subsection (a) of this section or an applicable regulation, he shall notify the prime sponsor or eligible applicant of the noncompliance and shall request the prime sponsor or eligible applicant to secure compliance. If within a reasonable period of time, not to exceed sixty days, the prime sponsor or eligible applicant fails or refuses to secure compliance, the Secretary, in addition to exercising the powers and functions provided for the termination of financial assistance under this chapter, is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]; or (3) to take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever he has reason to believe that a prime sponsor or eligible applicant is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(d) Enforcement of discrimination provisions

The Secretary shall enforce the provisions of subsection (a) of this section dealing with discrimination on the basis of sex in accordance with section 2000d-1 of title 42. Section 2000d-2 of title 42 shall apply with respect to any action taken by the Secretary to enforce such provisions of such subsection. This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program or activity receiving assistance under this chapter.

(Pub. L. 93-203, title VII, § 712, formerly title VI, § 612, Dec. 28, 1973, 87 Stat. 882, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 818 of this title.

§ 992. Records, audits, and reports

In order to assure that funds provided under this chapter are used in accordance with its provisions, each recipient shall—

(1) use such fiscal, audit, and accounting procedures as may be necessary to assure (A) proper accounting for payments received by it, and (B) proper disbursement of such payments;

(2) provide to the Secretary and the Comptroller General of the United States access to, and the right to examine, any books, documents, papers, or records as he requires; and

(3) make such reports to the Secretary or the Comptroller General of the United States as he requires.

(Pub. L. 93-203, title VII, § 713, formerly title VI, § 613, Dec. 28, 1973, 87 Stat. 882, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

CHAPTER 18—EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 441 of this title; title 18 section 1027; title 20 section 1085; title 26 section 412; title 45 section 743.

SUBCHAPTER I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1201, 1202, 1203, 1343 of this title; title 18 sections 664, 1027, 1954; title 19 section 2373; title 26 section 6103.

SUBTITLE A—GENERAL PROVISIONS

§ 1001. Congressional findings and declaration of policy

(a) Benefit plans as effecting interstate commerce and the Federal taxing power

The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans are carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance

It is hereby further declared to be the policy of this chapter to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

(Pub. L. 93-406, title I, § 2, Sept. 2, 1974, 88 Stat. 832.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables volume.

SHORT TITLE

Section 1 of Pub. L. 93-406 provided that: "This Act [enacting this chapter, sections 408 to 415, 4971 to 4975, 6057 to 6059, 6692, and 6693 of Title 26, Internal Revenue Code, section 1037 of Title 31, Money and Finance, and section 1320b-1 of Title 42, The Public Health and Welfare, amending section 441 of this title, sections 5108 and 5109 of Title 5, Government Organization and Employees, sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, sections 37, 46, 56, 62, 72, 101, 122, 219, 220, 275, 401, 402, 403, 404, 405, 406, 407, 503, 801, 805, 871, 901, 1304, 1348, 1379, 2039, 3401, 6033, 6047, 6051, 6103, 6104, 6161, 6201, 6204, 6211, 6212, 6213, 6214, 6344, 6501, 6503, 6511, 6512, 6601, 6652, 6653, 6659, 6676, 6677, 6679, 6682, 6688, 6690, 6861, 6862, 7422, 7451, 7459, 7482, 7701, and 7802, of Title 26, and section 846 of Title 31, repealing sections 301 to 309 of this title, and enacting provisions set out as notes under sections 72, 122, 219, 401, 402, 403, 404, 410, 411, 412, 415, 501, 4973, 4975, 6057, 6059, 6103, 6104, 7476, and 7802 of Title 26] may be cited as the 'Employee Retirement Income Security Act of 1974'."

§ 1002. Definitions

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

(2) The terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(A) provides retirement income to employees, or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

(6) The term "employee" means any individual employed by an employer.

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

(9) The term "person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

(10) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American

Samoa, Guam, Wake Island, and the Canal Zone. The term "United States" when used in the geographic sense means the States and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947 [29 U.S.C. 141 et seq.], or the Railway Labor Act [45 U.S.C. 151 et seq.].

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account.

(15) The term "relative" means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

(16) (A) The term "administrator" means—

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term "plan sponsor" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(17) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(18) The term "adequate consideration" when used in part 4 of subtitle B of this subchapter means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 78f of title 15, or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

(19) The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. For purposes of this paragraph, a right to an accrued benefit derived

from employer contributions shall not be treated as forfeitable merely because the plan contains a provision described in section 1053(a)(3) of this title.

(20) The term "security" has the same meaning as such term has under section 77b(1) of title 15.

(21)(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 1105(c)(1)(B) of this title.

(B) If any money or other property of an employee benefit plan is invested in securities issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this subchapter, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

(22) The term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefit under the plan which the Secretary of the Treasury finds to be a benefit described in section 1054(b)(1)(G) of this title.

(23) The term "accrued benefit" means—

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided in section 1054(c)(3) of this title, expressed in the form of an annual benefit commencing at normal retirement age, or

(B) in the case of a plan which is an individual account plan, the balance of the individual's account.

(24) The term "normal retirement age" means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

(25) The term "vested liabilities" means the present value of the immediate or deferred benefits available at normal retirement age for participants and their beneficiaries which are nonforfeitable.

(26) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by a trustee or a named fiduciary (as defined in section 1102(a)(2) of this title) pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination.

(27) The term "present value", with respect to a liability, means the value adjusted to reflect anticipated events. Such adjustments shall conform to such regulations as the Secretary of the Treasury may prescribe.

(28) The term "normal service cost" or "normal cost" means the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(29) The term "accrued liability" means the excess of the present value, as of a particular valuation date of a pension plan, of the projected future benefit costs and administrative expenses for all plan participants and beneficiaries over the present value of future contributions for the normal cost of all applicable plan participants and beneficiaries. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(30) The term "unfunded accrued liability" means the excess of the accrued liability, under an actuarial cost method which so provides, over the present value of the assets of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(31) The term "advance funding actuarial cost method" or "actuarial cost method" means a recognized actuarial technique utilized for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

(32) The term "governmental plan" means a plan established or maintained for its employ-

ees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935, or 1937 [45 U.S.C. 231 et seq.] applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act [22 U.S.C. 288 et seq.].

(33)(A) The term "church plan" means (i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26, or (ii) a plan described in subparagraph (C).

(B) The term "church plan" (notwithstanding the provisions of subparagraph (A)) does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of title 26), or

(ii) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501 of title 26.

(C) Notwithstanding the provisions of subparagraph (B)(ii), a plan in existence on January 1, 1974, shall be treated as a "church plan" if it is established and maintained by a church or convention or association of churches for its employees and employees of one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501 of title 26. The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence of this subparagraph shall not apply with respect to any plan for any plan year beginning December 31, 1982.

(34) The term "individual account plan" or "defined contribution plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(35) The term "defined benefit plan" means a pension plan other than an individual account plan; except that a pension plan which is not an individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant—

(A) for the purposes of section 1052 of this title, shall be treated as an individual account plan, and

(B) for the purposes of paragraph (23) of this section and section 1054 of this title, shall be treated as an individual account plan to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

(36) The term "excess benefit plan" means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of title 26 on plans to which that section applies without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.

(37)(A) The term "multiemployer plan" means a plan—

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to one or more collective-bargaining agreements between an employee organization and more than one employer,

(iii) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions,

(iv) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who had employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

(v) which satisfies such other requirements as the Secretary may by regulations prescribe.

(B) For purposes of this paragraph—

(i) if a plan is a multiemployer plan within the meaning of subparagraph (A) for any plan year, clause (iii) of subparagraph (A) shall be applied by substituting "75 percent" or "50 percent" for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions, and

(ii) all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of title 26, determined without regard to section 1563(e)(3)(C) of title 26) shall be deemed to be one employer.

(38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102(a)(2) of this title)—

(A) who has the power to manage, acquire, or dispose of any asset of a plan;

(B) who is (i) registered as an investment adviser under the Investment Advisers Act of

1940 [15 U.S.C. 80b-1 et seq.]; (ii) is a bank, as defined in that Act; or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

(C) has acknowledged in writing that he is a fiduciary with respect to the plan.

(39) The terms "plan year" and "fiscal year of the plan" mean with respect to a plan, calendar, policy, or fiscal year on which the records of the plan are kept.

(Pub. L. 93-406, title I, § 3, Sept. 2, 1974, 88 Stat. 833.)

REFERENCES IN TEXT

This subchapter, referred to in opening phrase, in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

The Outer Continental Shelf Lands Act, referred to in par. (10), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables volume.

The Labor Management Relations Act, 1947, referred to in par. (12), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§ 141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables volume.

The Railway Labor Act, referred to in par. (12), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

The Investment Company Act of 1940, referred to in par. (21)(B), is act Aug. 22, 1940, ch. 686, title I, 54 Stat. 789, as amended, which is classified principally to subchapter I (§ 80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables volume.

The Railroad Retirement Act of 1935 or 1937, referred to in par. (32) means act Aug. 29, 1935, ch. 812, 49 Stat. 867, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93-445, title I, Oct. 16, 1974, 88 Stat. 1305 and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables volume.

The International Organizations Immunities Act, referred to in par. (32), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables volume.

The Investment Advisers Act of 1940, referred to in par. (38)(B), is act Aug. 22, 1940, ch. 686, title II, 54 Stat. 847, as amended, which is classified generally to subchapter II (§ 80b-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b-20 of Title 15 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1003, 1023, 1053, 1055, 1081, 1301, 1321, 1342 of this title; title 18 section 1954.

§ 1003. Coverage

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this subchapter shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 1002(32) of this title);

(2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under section 410(d) of title 26;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.

(Pub. L. 93-406, title I, § 4, Sept. 2, 1974, 88 Stat. 839.)

REFERENCES IN TEXT

This subchapter, referred to in text in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1051, 1081, 1101, 1144 of this title.

SUBTITLE B—REGULATORY PROVISIONS

PART 1—REPORTING AND DISCLOSURE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1131 of this title.

§ 1021. Duty of disclosure and reporting

(a) Summary plan description and information to be furnished to participants and beneficiaries

The administrator of each employee benefit plan shall cause to be furnished in accordance with section 1024(b) of this title to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan—

(1) a summary plan description described in section 1022(a)(1) of this title; and

(2) the information described in section 1024(b)(3) and 1025(a) and (c) of this title.

(b) Plan description, modifications and changes, and reports to be filed with Secretary of Labor

The administrator shall, in accordance with section 1024(a) of this title, file with the Secretary—

(1) the summary plan description described in section 1022(a)(1) of this title;

(2) a plan description containing the matter required in section 1022(b) of this title;

(3) modifications and changes referred to in section 1022(a)(2) of this title;

(4) the annual report containing the information required by section 1023 of this title; and

(5) terminal and supplementary reports as required by subsection (c) of this section.

(c) Terminal and supplementary reports

(1) Each administrator of an employee pension benefit plan which is winding up its affairs (without regard to the number of participants remaining in the plan) shall, in accordance with regulations prescribed by the Secretary, file such terminal reports as the Secretary may consider necessary. A copy of such report shall also be filed with the Pension Benefit Guaranty Corporation.

(2) The Secretary may require terminal reports to be filed with regard to any employee welfare benefit plan which is winding up its affairs in accordance with regulations promulgated by the Secretary.

(3) The Secretary may require that a plan described in paragraph (1) or (2) file a supplementary or terminal report with the annual report in the year such plan is terminated and that a copy of such supplementary or terminal report in the case of a plan described in paragraph (1) be also filed with the Pension Benefit Guaranty Corporation.

(d) Cross references

For regulations relating to coordination of reports to the Secretaries of Labor and the Treasury, see section 1204 of this title.

(Pub. L. 93-406, title I, § 101, Sept. 2, 1974, 88 Stat. 840.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1022. Plan description and summary plan description

(a)(1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 1024(b)(1) of this title.

(2) A plan description (containing the information required by subsection (b) of this section) of any employee benefit plan shall be prepared on forms prescribed by the Secretary, and shall be filed with the Secretary as required by section 1024(a)(1) of this title. Any material modification in the terms of the plan and any change in the information described in subsection (b) of this section shall be filed in accordance with section 1024(a)(1)(D) of this title.

(b) The plan description and summary plan description shall contain the following information: The name and type of administration of the plan; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 1133 of this title).

(Pub. L. 93-406, title I, § 102, Sept. 2, 1974, 88 Stat. 841.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1024, 1029 of this title.

§ 1023. Annual reports

(a) Publication and filing

(1)(A) An annual report shall be published with respect to every employee benefit plan to which this part applies. Such report shall be filed with the Secretary in accordance with section 1024(a) of this title, and shall be made available and furnished to participants in accordance with section 1024(b) of this title.

(B) The annual report shall include the information described in subsections (b) and (c) of this section and where applicable subsections (d) and (e) of this section and shall also include—

(i) a financial statement and opinion, as required by paragraph (3) of this subsection, and

(ii) an actuarial statement and opinion, as required by paragraph (4) of this subsection.

(2) If some or all of the information necessary to enable the administrator to comply with the requirements of this subchapter is maintained by—

(A) an insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account,

(B) a bank or similar institution which holds some or all of the assets of the plan in a common or collective trust or a separate trust, or custodial account, or

(C) a plan sponsor as defined in section 1002 (16)(B) of this title,

such carrier, organization, bank, institution, or plan sponsor shall transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year (or such other date as may be prescribed under regulations of the Secretary).

(3)(A) Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual reports by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(3) of this section and the summary material required under section 1024(b)(3) of this title present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report. In a case where a plan is not required to file an annual report, the requirements of this paragraph shall not apply. In a case where by reason of section 1024(a)(2) of this title a plan is required only to file a simplified annual report, the Secretary may waive the requirements of this paragraph.

(B) In offering his opinion under this section the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b)(3)(G) of this section prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(D) For purposes of this subchapter, the term "qualified public accountant" means—

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

(4)(A) The administrator of an employee pension benefit plan subject to the reporting requirement of subsection (d) of this section shall engage, on behalf of all plan participants, an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section. In a case where a plan is not required to file an annual report, the requirement of this paragraph shall not apply, and, in a case where by reason of section 1024(a)(2) of this title, a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section—

(i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

(ii) represent his best estimate of anticipated experience under the plan.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of this subchapter, the term "enrolled actuary" means an actuary enrolled under subtitle C of subchapter II of this chapter.

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under subsection (b) of this section to which any qualified public accountant has expressed an opinion, if he so states his reliance.

(b) Financial statement

An annual report under this section shall include a financial statement containing the following information:

(1) With respect to an employee welfare benefit plan; a statement of assets and liabilities; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general de-

scription of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of any significant changes in plan benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of such pension plan.

(3) With respect to all employee benefit plans, the statement required under paragraph (1) or (2) shall have attached the following information in separate schedules:

(A) a statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issue, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the plan, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expense incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this subsection; and

(H) a schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction. For purposes of the preceding sentence, the term "reportable transaction" means a transaction to which the plan is a party if such transaction is—

(i) a transaction involving an amount in excess of 3 percent of the current value of the assets of the plan;

(ii) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a plan year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the plan;

(iii) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the plan year exceeds 3 percent of the current value of the assets of the plan; or

(iv) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the plan year respecting a security is required to be reported by reason of clause (i).

(4) The Secretary may, by regulation, relieve any plan from filing a copy of a statement of assets and liabilities (or other information) described in paragraph (3)(G) if such statement and other information is filed with the Secretary by the bank or insurance carrier which maintains the common or collective trust or separate account.

(c) Information to be furnished by administrator

The administrator shall furnish as a part of a report under this section the following information:

(1) The number of employees covered by the plan.

(2) The name and address of each fiduciary.

(3) Except in the case of a person whose compensation is minimal (determined under regulations of the Secretary) and who performs solely ministerial duties (determined under such regulations), the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian.

(5) Such financial and actuarial information including but not limited to the material described in subsections (b) and (d) of this section as the Secretary may find necessary or appropriate.

(d) Actuarial statement

With respect to an employee pension benefit plan (other than (A) a profit sharing, savings, or other plan, which is an individual account plan, (B) a plan described in section 1081(b) of this title, or (C) a plan described both in section 1321(b) of this title and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 1081(a) of this title) an annual report under this section for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) The date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed.

(2) The date and amount of the contribution (or contributions) received by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) The following information applicable to the plan year for which the report is filed: the normal costs, the accrued liabilities, an identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to determine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 1082 of this title.

(4) The number of participants and beneficiaries, both retired and nonretired, covered by the plan.

(5) The current value of the assets accumulated in the plan, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 1082 of this title and a statement explaining the basis of such valuation of present value of assets.

(6) The present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories as set forth in section 1344 of this title, and the actuarial assumptions used in these computations. The Secretary shall establish regulations defining (for purposes of this section) "termination priority categories" and acceptable methods, including approximate methods, for allocating the plan's liabilities to such termination priority categories.

(7) A certification of the contribution necessary to reduce the accumulated funding deficiency to zero.

(8) A statement by the enrolled actuary—

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the requirements of section 1082(c)(3) of this title (relating to reasonable actuarial assumptions and methods) have been complied with.

(9) A copy of the opinion required by subsection (a)(4) of this section.

(10) Such other information regarding the plan as the Secretary may by regulation require.

(11) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

(e) Statement from insurance company, insurance service, or other similar organizations which sell or guarantee plan benefits

If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the plan year and enumerating—

(1) the premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service, or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

(Pub. L. 93-406, title I, § 103, Sept. 2, 1974, 88 Stat. 841.)

REFERENCES IN TEXT

This part, referred to in subsec. (a)(1)(A), in the original read "this part", meaning part 1 of subtitle B of title I of Pub. L. 93-406, which enacted this part, amended section 441 of this title and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

This subchapter, referred to in subsecs. (a)(2), (3)(D), (4)(C), in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

CONSOLIDATION OF ACTUARIAL REPORTS

Secretary of the Treasury and Secretary of Labor to take such steps as may be necessary to assure coordination to the maximum extent feasible between the actuarial reports required by subsec. (d) of this section and section 6059 of Title 26, Internal Revenue Code, see section 1033(c) of Pub. L. 93-406, set out as a note under section 6059 of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1024, 1029 of this title.

§ 1024. Filing and furnishing of information

(a) Filing of annual report, plan description, summary plan description, and modifications and changes with Secretary

(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary—

(A) the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing);

(B) the plan description within 120 days after such plan becomes subject to this part and an updated plan description, no more frequently than once every 5 years, as the Secretary may require;

(C) a copy of the summary plan description at the time such summary plan description is required to be furnished to participants and beneficiaries pursuant to subsection (b)(1)(B) of this section; and

(D) modifications and changes referred to in section 1022(a)(2) of this title within 60 days after such modification or change is adopted or occurs, as the case may be.

The Secretary shall make copies of such plan descriptions, summary plan descriptions, and annual reports available for inspection in the public document room of the Department of Labor. The administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

(2)(A) With respect to annual reports required to be filed with the Secretary under this part, he may by regulation prescribe simplified annual reports for any pension plan which covers less than 100 participants. In addition, and without limiting the foregoing sentence, the Secretary may waive or modify the requirements of section 1023(d)(6) of this title in such cases or categories of cases as to which he finds that (i) the interests of the plan participants are not harmed thereby and (ii) the expense of compliance with the specific requirements of section 1023(d)(6) of this title is not justified by the needs of the participants, the Pension Benefit Guaranty Corporation, and the Department of Labor for some portion or all of the information otherwise required under section 1023(d)(6) of this title.

(B) Nothing contained in this paragraph shall preclude the Secretary from requiring any information or data from any such plan to which this part applies where he finds such data or information is necessary to carry out the purposes of this subchapter nor shall the Secretary be precluded from revoking provisions for simplified reports for any such plan if he finds it

necessary to do so in order to carry out the objectives of this subchapter.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this subchapter, or may provide for simplified reporting and disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans.

(4) The Secretary may reject any filing under this section—

(A) if he determines that such filing is incomplete for purposes of this part; or

(B) if he determines that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 1023(a)(3)(A) or section 1023(a)(4)(B) of this title.

(5) If the Secretary rejects a filing of a report under paragraph (4) and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the Secretary makes his determination under paragraph (4) to reject the filing, and if the Secretary deems it in the best interest of the participants, he may take any one or more of the following actions—

(A) retain an independent qualified public accountant (as defined in section 1023(a)(3)(D) of this title) on behalf of the participants to perform an audit,

(B) retain an enrolled actuary (as defined in section 1023(a)(4)(C) of this title) on behalf of the plan participants, to prepare an actuarial statement,

(C) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this part, or

(D) take any other action authorized by this subchapter.

The administrator shall permit such accountant or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report, and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(b) Publication of summary plan description and annual report to participants and beneficiaries of plan

Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of summary, plan description, and all modifications and changes referred to in section 1022(a)(1) of this title—

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 1022 of this title which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 1022 of this title every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 1022(a)(1) of this title, a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan.

(2) The administrator shall make copies of the plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribed by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrators shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 1023(b)(3) of this title and such other material as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(c) Statement of rights

The Secretary may by regulation require that the administrator of any employee benefit plan furnish to each participant and to each beneficiary receiving benefits under the plan a statement of the rights of participants and beneficiaries under this subchapter.

(d) Cross references

For regulations respecting coordination of reports to the Secretaries of Labor and the Treasury, see section 1204 of this title.

(Pub. L. 93–406, title I, § 104, Sept. 2, 1974, 88 Stat. 847.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a)(1)(B), (2)(A), (B), (4)(A), (5)(C), (b)(1), in the original read "this part", meaning part 1 of subtitle B of title I of Pub. L. 93–406, which enacted this part, amended section 441 of this title and sections 664, 1027, and 1954 of Title

18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

This subchapter, referred to in subsecs. (a)(2)(B), (3), (5)(D), (c), in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1022, 1023, 1027, 1029 of this title; title 26 section 6058.

§ 1025. Reporting of participant's benefit rights

(a) Statement furnished by administrator to participants and beneficiaries

Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

(1) the total benefits accrued, and

(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) One-per-year limit on reports

In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) of this section during any one 12 month period.

(c) Individual statement furnished by administrator to participants setting forth information in administrator's Internal Revenue registration statement

Each administrator required to register under section 6057 of title 26 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of title 26.

(d) Plans to which more than one unaffiliated employer is required to contribute; regulations

Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.

(Pub. L. 93-406, title I, § 105, Sept. 2, 1974, 88 Stat. 849.)

PROMULGATION OF REGULATIONS

Secretary of Labor authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations by him, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1026, 1132 of this title.

§ 1026. Reports made public information

(a) Except as provided in subsection (b) of this section, the contents of the descriptions, annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in section 1025(a) and 1025(c) of this title with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] may be disclosed under such Act.

(Pub. L. 93-406, title I, § 106, Sept. 2, 1974, 88 Stat. 850.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

§ 1027. Retention of records

Every person subject to a requirement to file any description or report or to certify any information therefor under this subchapter or who would be subject to such a requirement but for an exemption or simplified reporting requirement under section 1024(a)(2) or (3) of this title shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption or simplified reporting requirement under section 1024(a)(2) or (3) of this title.

(Pub. L. 93-406, title I, § 107, Sept. 2, 1974, 88 Stat. 850.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

§ 1028. Reliance on administrative interpretations

In any criminal proceeding under section 1131 of this title, based on any act or omission in alleged violation of this part or section 1112 of

this title, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with this part or section 1112 of this title, if he pleads and proves that the act of omission complained of was in good faith, in conformity with, and in reliance on any regulation or written ruling of the Secretary, or (2) publish and file any information required by any provision of this part if he pleads and proves that he published and filed such information in good faith, and in conformity with any regulation or written ruling of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the plan description, annual reports, and other reports required by this subchapter, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

(Pub. L. 93–406, title I, § 108, Sept. 2, 1974, 88 Stat. 850.)

REFERENCES IN TEXT

This part, referred to in text, in the original read "this part", meaning part 1 of subtitle B of title I of Pub. L. 93–406, which enacted this part, amended section 441 of this title and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93–406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1029. Forms

(a) Information required on forms

Except as provided in subsection (b) of this section, the Secretary may require that any information required under this subchapter to be submitted to him, including but not limited to the information required to be filed by the administrator pursuant to section 1023(b)(3) and (c) of this title, must be submitted on such forms as he may prescribe.

(b) Information not required on forms

The financial statement and opinion required to be prepared by an independent qualified public accountant pursuant to section 1023(a)(3)(A) of this title, the actuarial statement required to be prepared by an enrolled actuary pursuant to section 1023(a)(4)(A) of this title and the summary plan description required by section 1022(a) of this title shall not be required to be submitted on forms.

(c) Format and content of summary plan description, annual report, etc., required to be furnished to plan participants and beneficiaries

The Secretary may prescribe the format and content of the summary plan description, the summary of the annual report described in section 1024(b)(3) of this title and any other report, statements or documents (other than the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated), which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan.

(Pub. L. 93–406, title I, § 109, Sept. 2, 1974, 88 Stat. 850.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), in the original read "this title", meaning title I of Pub. L. 93–406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1135 of this title.

§ 1030. Alternative methods of compliance

(a) The Secretary on his own motion or after having received the petition of an administrator may prescribe an alternative method for satisfying any requirement of this part with respect to any pension plan, or class of pension plans, subject to such requirement if he determines—

(1) that the use of such alternative method is consistent with the purposes of this subchapter and that it provides adequate disclosure to the participants and beneficiaries in the plan, and adequate reporting to the Secretary,

(2) that the application of such requirement of this part would—

(A) increase the costs to the plan, or

(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved; and

(3) that the application of this part would be adverse to the interests of plan participants in the aggregate.

(b) An alternative method may be prescribed under subsection (a) of this section by regulation or otherwise. If an alternative method is prescribed other than by regulation, the Secretary shall provide notice and an opportunity for interested persons to present their views, and shall publish in the Federal Register the provisions of such alternative method.

(Pub. L. 93–406, title I, § 110, Sept. 2, 1974, 88 Stat. 851.)

REFERENCES IN TEXT

This part, referred to in subsec. (a), in the original read "this part", meaning part 1 of subtitle B of title I of Pub. L. 93-406, which enacted this part, amended section 441 of this title and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

This subchapter, referred to in subsec. (a)(1), in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1143, 1343 of this title.

§ 1031. Repeal and effective date

(a)(1) The Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.] is repealed except that such Act shall continue to apply to any conduct and events which occurred before the effective date of this part.

(2)(A) Section 664 of title 18 is amended by striking out "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "any employee benefit plan subject to any provisions of title I of the Employee Retirement Income Security Act of 1974".

(B)(i) Section 1027 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "title I of the Employee Retirement Income Security Act of 1974", and by striking out "Act" each place it appears and inserting in lieu thereof "title".

(ii) The heading for such section is amended by striking out "WELFARE AND PENSION PLANS DISCLOSURE ACT" and inserting in lieu thereof "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974".

(iii) The table of sections of chapter 47 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" in the item relating to section 1027 and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(C) Section 1954 of such title 18 is amended by striking out "any plan subject to the provisions of the Welfare and Pension Plans Disclosure Act as amended" and inserting in lieu thereof "any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provisions of title I of the Employee Retirement Income Security Act of 1974"; and by striking out "sections 3(3) and 5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended" and inserting in lieu thereof "sections 3(4) and (3)(*16*)[1] of the Employee Retirement Income Security Act of 1974".

(D) Section 211 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 441) is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(b)(1) Except as provided in paragraph (2), this part (including the amendments and repeals made by subsection (a) of this section) shall take effect on January 1, 1975.

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may postpone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure Act (and of any amendment made by subsection (a)(2) of this section) and the effective date of any provision of this part, until the beginning of the first plan year of such plan which begins after January 1, 1975.

(c) The provisions of this subchapter authorizing the Secretary to promulgate regulations shall take effect on September 2, 1974.

(Pub. L. 93-406, title I, § 111, Sept. 2, 1974, 88 Stat. 851.)

REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in subsecs. (a)(1), (2), (b)(2), is Pub. L. 85-836, Aug. 28, 1958, 72 Stat. 997, as amended, which was classified generally to chapter 10 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 301 of this title and Tables volume.

Title I of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(A) to (C), means title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(B)(ii), (iii), (D), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829. Titles I, III, and IV of such act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

This part, referred to in subsec. (b), in the original read "this part", meaning part 1 of subtitle B of title I of Pub. L. 93-406, which enacted this part, amended section 441 of this title and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

This subchapter, referred to in subsec. (c), in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

PART 2—PARTICIPATION AND VESTING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1103, 1132, 1201, 1202 of this title; title 26 section 6057.

§ 1051. Coverage

This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title) other than—

[1] So in original. Probably should read "3(16)".

(1) an employee welfare benefit plan;

(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(3)(A) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan, or

(B) a trust described in section 501(c)(18) of title 26;

(4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of title 26 and which does not at any time after September 2, 1974, provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of title 26;

(6) an individual retirement account or annuity described in section 408 of title 26, or a retirement bond described in section 409 of title 26; or

(7) an excess benefit plan.

(Pub. L. 93-406, title I, § 201, Sept. 2, 1974, 88 Stat. 852.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1003 of this title.

§ 1052. Minimum participation standards

(a)(1)(A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 25; or

(ii) the date on which he completes 1 year of service.

(B)(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "3 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) of title 26) by an employer which is exempt from tax under section 501(a) of title 26, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "30" for "25". This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age, unless—

(A) the plan is a—

(i) defined benefit plan, or

(ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury), and

(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

(3)(A) For purposes of this section, the term "year of service" means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary.

(C) For purposes of this section, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b)(1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a)(1) of this section.

(2) In the case of any employee who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title) under the plan to which the service requirements of clause (i) of subsection (a)(1)(B) of this section apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) of this section in the case of any participant who has any 1-year break in service (as defined in sec-

tion 1053(b)(3)(A) of this title), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3) of this section) after his return.

(4) In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) of this section if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this paragraph by reason of any prior break in service.

(Pub. L. 93–406, title I, § 202, Sept. 2, 1974, 88 Stat. 853.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1053, 1054, 1060, 1061 of this title.

§ 1053. Minimum vesting standards

(a) Nonforfeitability requirements

Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

(A) A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

Years of service:	Nonforfeitable percentage
5	25.
6	30.
7	35.
8	40.
9	45.
10	50.
11	60.
12	70.
13	80.
14	90.
15 or more	100.

(C)(i) A plan satisfies the requirements of this subparagraph if a participant who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

If years of service equal or exceed—	and sum of age and service equals or exceeds—	then the nonforfeitable percentage is—
5	45	50.
6	47	60.
7	49	70.
8	51	80.
9	53	90.
10	55	100.

(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this paragraph unless any participant who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 1055 of this title).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multi-employer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 1082(c)(8) of this title.

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who

does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 1054(c)(2)(C) of this title) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 1054(c)(2)(C) of this title (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made before the participant has any 1-year break in service commencing after the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before September 2, 1974, if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) Cross reference.—

For nonforfeitably[1] where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 1056(c) of this title.

(b) Computation of period of service

(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2) of this section, all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 22, except that in case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2) of this section, the plan may not disregard any such year of service during which the employee was a participant;

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970; and

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date.

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

(B) For purposes of this section, the term "hour of service" has the meaning provided by section 1052(a)(3)(C) of this title.

(C) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as determined under regulations of the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(3)(A) For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 1054(b)(1)(F) of this title who has any 1-year break in service, years of service after such break shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such break.

(D) For purposes of paragraph (1), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year

[1] So in original. Probably should read "nonforfeitability".

breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

(4) Cross references.—

(A) For definitions of "accrued benefit" and "normal retirement age", see sections 1002(23) and (24) of this title;

(B) For effect of certain cash out distributions, see section 1054(d)(1) of this title.

(c) Plan amendments altering vesting schedule

(1)(A) A plan amendment changing any vesting schedule under this plan shall be treated as not satisfying the requirements of subsection (a)(2) of this section if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) of this section unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(2) Subsection (a) of this section shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary of the Treasury to preclude the discrimination prohibited by section 401(a)(4) of title 26.

(3) The requirements of subsection (a)(2) of this section shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th year following the plan year for which such contributions were made. For purposes of this part, the term "class year plan" means a profit sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

(d) Nonforfeitable benefits after lesser period and in greater amounts than required

A pension plan may allow for nonforfeitable benefits after a lesser period and in greater amounts than are required by this part.

(Pub. L. 93–406, title I, § 203, Sept. 2, 1974, 88 Stat. 854.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1052, 1054, 1056, 1057, 1059, 1060, 1061, 1222 of this title; title 26 section 6057.

§ 1054. Benefit accrual requirements

(a) Satisfaction of requirements by pension plans

Each pension plan shall satisfy the requirements of subsection (b)(2) of this section, and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1) of this section.

(b) Enumeration of plan requirements

(1)(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 1052(a)(3)(A) of this title.

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 1081(b) of this title (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 1081(b) of this title were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] which benefits under the plan—

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(2) A plan satisfies the requirements of this paragraph if—

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(3)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 1052(b) of this title) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

(B) For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

(D) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary.

(E) For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(c) Employee's accrued benefits derived from employer and employee contributions

(1) For purposes of this section and section 1053 of this title an employee's accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the ac-

crued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2)(A) In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B)(i) In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

(ii) For purposes of clause (i), the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.

(C) For purposes of this subsection, the term "accumulated contributions" means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section 1053(a)(2) of this title does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which section 1053(a)(2) of this title applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plans, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary of the Treasury determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(E) The accrued benefit derived from employee contributions shall not exceed the greater of—

(i) the employee's accrued benefit under the plan, or

(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.

(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(4) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(d) Employee service which may be disregarded in determining employee's accrued benefits under plan

Notwithstanding section 1053(b)(1) of this title, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service

For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) of this section unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) of this section with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) of this section and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

(1) received such a distribution in any plan year to which this section applies which distribution was less than the present value of his accrued benefit,

(2) resumes employment covered under the plan, and

(3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) of this section.

In the case of a defined contribution plan, the plan provision required under this subsection may provide that such repayment must be made before the participant has any 1-year break in service commencing after such withdrawal.

(f) Employer treated as maintaining a plan

For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

(g) Decrease of accrued benefits through amendment of plan

The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(c)(8) of this title.

(h) Cross reference

For special rules relating to class year plans and plan provisions adopted to preclude discrimination, see section 1053(c)(2) and (3) of this title.

(Pub. L. 93-406, title I, § 204, Sept. 2, 1974, 88 Stat. 858.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(G), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1053, 1057, 1060, 1061 of this title.

§ 1055. Joint and survivor annuity requirement

(a) Form of payment of annuity benefits

If a pension plan provides for the payment of benefits in the form of an annuity, such plan shall provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

(b) Plans providing for payment of benefits before normal retirement age

In the case of a plan which provides for the payment of benefits before the normal retirement age as defined in section 1002(24) of this title, the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(1) the date the employee reaches the earliest retirement age, or

(2) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(c) Election of qualified joint and survivor annuity form

(1) A plan described in subsection (b) of this section does not meet the requirements of subsection (a) of this section unless, under the plan, a participant has a reasonable period in which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subsection (b) of this section ends and ending on the date on which he reaches normal retirement age if he continues his employment during that period.

(2) A plan does not meet the requirements of this subsection unless, in the case of such election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he had made an election under this subsection immediately prior to his retirement and if his retirement had occurred on the date immediately preceding the date of his death and within the period within which an election can be made.

(d) Participant's spouse not entitled to receive survivor annuity

A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made under subsection (c) of this section) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

(e) Election to take annuity

A plan shall not be treated as satisfying the requirements of this section unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this

subsection) not to take such joint and survivor annuity.

(f) Plan provisions which render election or revocation ineffective if participant dies within period of up to 2 years following date of election or revocation

A plan shall not be treated as not satisfying the requirements of this section solely because, under the plan there is a provision that any election under subsection (c) or (e) of this section, and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

(1) the participant dies from accidental causes,

(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) such election or revocation is made before such accident occurred.

(g) Definitions

For purposes of this section:

(1) The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability).

(2) The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(3) The term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single annuity for the life of the participant.

(h) Increased costs resulting from providing joint and survivor annuity benefits

For the purposes of this section, a plan may take into account in any equitable fashion (as determined by the Secretary of the Treasury) any increased costs resulting from providing joint and survivor annuity benefits under an election made under subsection (c) of this section.

(i) Effective date

This section shall apply only if—

(1) the annuity starting date did not occur before the effective date of this section, and

(2) the participant was an active participant in the plan on or after such effective date.

(Pub. L. 93-406, title I, § 205, Sept. 2, 1974, 88 Stat. 862.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (i), see section 1061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1061 of this title.

§ 1056. Form and payment of benefits

(a) Commencement date for payment of benefits

Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

(1) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(3) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, such plan shall provide that a participant who satisfied the service requirements for such early retirement benefit, but separate from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury.

(b) Decrease in plan benefits by reason of increases in benefit levels under Social Security Act or Railroad Retirement Act of 1937

If—

(1) a participant or beneficiary is receiving benefits under a pension plan, or

(2) a participant is separated from the service and has non-forfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] or the Railroad Retirement Act of 1937 [45 U.S.C. 231 et seq.] or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

(c) Forfeiture of accrued benefits derived from employer contributions

No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable) is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 1053(a)(3)(D)(iii) of this title.

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued non-forfeitable benefit and is exempt from the tax imposed by section 4975 of title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of title 26.

(Pub. L. 93-406, title I, § 206, Sept. 2, 1974, 88 Stat. 864.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

The Railroad Retirement Act of 1937, referred to in subsec. (b), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and which was classified principally to subchapter III (§ 228a et seq.) of chapter 9 of Title 45, Railroads. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93-445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45. For complete classification of these acts to the Code, see Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1061 of this title.

§ 1057. Temporary variances from certain vesting requirements

In the case of any plan maintained on January 1, 1974, if not later than 2 years after September 2, 1974, the administrator petitions the Secretary, the Secretary may prescribe an alternate method which shall be treated as satisfying the requirements of section 1053(a)(2) or 1054(b)(1) (other than subparagraph (D) thereof) of this title or both for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation.

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 1083 or 1084 of this title would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the administrator petitions the Secretary for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.

(Pub. L. 93-406, title I, § 207, Sept. 2, 1974, 88 Stat. 865.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1143 of this title.

§ 1058. Mergers and consolidations of plans or transfers of plan assets

A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after September 2, 1974, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation.

(Pub. L. 93-406, title I, § 208, Sept. 2, 1974, 88 Stat. 865.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1061, 1343 of this title.

§ 1059. Recordkeeping and reporting requirements

(a)(1) Except as provided by paragraph (2) every employer shall, in accordance with regulations prescribed by the Secretary, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 1053(b)(3)(A) of this title).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the

preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.

(2) If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary, make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a) of this section, to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

(Pub. L. 93-406, title I, § 209, Sept. 2, 1974, 88 Stat. 865.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1060. Multiple employer plans

(a) Plan maintained by more than one employer

Notwithstanding any other provision of this part or part 3, the following provisions of this subsection shall apply to a plan maintained by more than one employer:

(1) Section 1052 of this title shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 1053 and 1054 of this title shall be applied as if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 1082 of this title shall be determined as if all participants in the plan were employed by a single employer.

(b) Maintenance of plan of predecessor employer

For purposes of this part and part 3—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

(c) Plan maintained by controlled group of corporations

For purposes of sections 1052, 1053, and 1054 of this title, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a)(4) and (e)(3)(C) of title 26) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 1082 of this title shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

(d) Plan of trades or businesses under common control

For purposes of sections 1052, 1053, and 1054 of this title, under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c) of this section.

(Pub. L. 93-406, title I, § 210, Sept. 2, 1974, 88 Stat. 866.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1061. Effective dates

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b)(1) Except as otherwise provided in subsection (d) of this section, sections 1055, 1056(d) and 1058 of this title shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) of this section in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 1054 and 1055 of this title by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after September 2, 1974), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 1086(c) of this title, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this chapter or the Internal Revenue Code of

1954 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on September 2, 1974, are not less favorable to participants, in the aggregate, than the rules provided under sections 1052, 1053, and 1054 of this title.

(2) For purposes of paragraph (1), the term "supplementary or special plan provision" means any plan provision which—

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of any annuity for the life of the participant, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b) of this section.

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit, this part shall apply to the first plan year to which such election applies and to all subsequent plan years.

(e)(1) No pension plan to which section 1052 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1052 of this title first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence to any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 1052(b) of this title, or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 1053 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1053 of this title first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 1052(b)(3) of this title, or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

(Pub. L. 93-406, title I, § 211, Sept. 2, 1974, 88 Stat. 867.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

The Internal Revenue Code of 1954, referred to in subsecs. (c)(1) and (d), is classified generally to Title 26, Internal Revenue Code.

Section 1017(d) of this Act, referred to in subsec. (d), is section 1017 of Pub. L. 93-406, which is set out as an Effective Date; Transitional Rules note under section 410 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1086 of this title.

PART 3—FUNDING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1060, 1103, 1132, 1201, 1202 of this title.

§ 1081. Coverage

(a) This part shall apply to any employee pension benefit plan described in section 1003(a) of this title, (and not exempted under section 1003(b) of this title), other than—

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b) of this section;

(3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(4)(A) a plan which is established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan; or

(B) a trust described in section 501(c)(18) of title 26;

(5) a plan which has not at any time after September 2, 1974, provided for employer contributions;

(6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of title 26,

(7) an individual retirement account or annuity as described in section 408(a) of title 26, or a retirement bond described in section 409 of title 26;

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 1002(35)(B) of this title; or

(9) an excess benefit plan.

(b) For the purposes of paragraph (2) of subsection (a) of this section a plan is an "insurance contract plan" if—

(1) the plan is funded exclusively by the purchase of individual insurance contracts,

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase became effective),

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary of the Treasury to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

(Pub. L. 93-406, title I, § 301, Sept. 2, 1974, 88 Stat. 868.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1003, 1023, 1054 of this title.

§ 1082. Minimum funding standards

(a) Avoidance of accumulated funding deficiency

(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 1085 of this title) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency.

(2) For the purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

(b) Funding standard account

(1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 1083(c) of this title) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, and

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D).

(3) For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years.

(C) the amount of the waived funding deficiency (within the meaning of section 1083(c) of this title) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be off set against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(5) The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(c) Methods

(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2)(A) For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this part, the value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary of the Treasury.

(3) For purposes of this part, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) For purposes of this section, if—

(A) a change in benefits under the Social Security Act [42 U.S.C. 301 et seq.] or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term "wages" under section 3121 of title 26, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of title 26,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary of the Treasury. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of the Treasury.

(6) If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (g) of this section) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2), (B), (C), and (D) and (3)(B) of subsection (b) of this section which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(7) For purposes of paragraph (6), the term "full funding limitation" means the excess (if any) of—

(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).

(8) For purposes of this part, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amend-

ment or, within 90 days afer the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless he determines that such amendment is necessary because of a substantial business hardship (as determined under section 1083(b) of this title) and that waiver under section 1083(a) of this title is unavailable or inadequate.

(9) For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(10) For purposes of this part, any contributions for a plan year made by an employer after the last day of such plan year, but not later than 2½ months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such 2½ month period may be extended for not more than 6 months under regulations prescribed by the Secretary of the Treasury.

(d) Cross reference

For alternative amortization method for certain multiemployer plans see section 1013(d) of this Act.

(Pub. L. 93-406, title I, § 302, Sept. 2, 1974, 88 Stat. 869.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables volume.

Section 1013(d) of this Act, referred to in subsec. (d), is section 1013(d) of Pub. L. 93-406, which is set out as an Alternate Amortization Method for certain Multiemployer Plans note under section 412 of Title 26, Internal Revenue Code.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1023, 1053, 1054, 1060, 1083, 1084, 1085, 1343 of this title.

§ 1083. Variance from minimum funding standard

(a) Waiver of requirements in event of business hardship

If an employer, or in the case of a multi-employer plan, 10 percent or more of the number of employers contributing to or under the plan are unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary of the Treasury may waive the requirements of section 1082(a) of this title for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under section 1082(b)(2)(C) of this title. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

(b) Matters considered in determining business hardship

For purposes of this part, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether—

(1) the employer is operating at an economic loss,

(2) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(3) the sales and profits of the industry concerned are depressed or declining, and

(4) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(c) Definition of "waived funding deficiency"

For purposes of this part, the term "waived funding deficiency" means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C) of section 1082 of this title) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(d) Cross reference

For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1954, see section 412(d) of title 26.

(Pub. L. 93-406, title I, § 303, Sept. 2, 1974, 88 Stat. 872.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1057, 1082, 1084, 1143 of this title.

§ 1084. Extension of amortization periods

(a) The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B) of section 1082 of this title) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of this chapter and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

(1) result in—

(A) a substantial risk to the voluntary continuation of the plan, or

(B) a substantial curtailment of pension benefit levels or employee compensation, and

(2) be adverse to the interests of plan participants in the aggregate.

(b)(1) No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 1083(a) of this title or an extension of time under subsection (a) of this section is in effect with respect to the plan, or if a plan amendment described in section 1082(c)(8) of this title has been made at any time in the preceding 12 months (24 months in the case of a multiem-

ployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(2) Paragraph (1) shall not apply to any plan amendment which—

(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan.

(B) only repeals an amendment described in section 1082(c)(8) of this title, or

(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of title 26.

(Pub. L. 93–406, title I, § 304, Sept. 2, 1974, 88 Stat. 873.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a) was in the original "this Act", meaning Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1057, 1143 of this title.

§ 1085. Alternative minimum funding standard

(a) Maintenance of account

A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this section.

(b) Operation of account

For a plan year the alternative minimum funding standard accounts shall be—

(1) charged with the sum of—

(A) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

(B) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

(C) an amount equal to the excess, if any, of credits to the alternative minimum funding standard account for all prior plan years over charges to such account for all such years, and

(2) credited with the amount considered contributed by the employer to or under the plan (within the meaning of section 1082(c)(10) of this title) for the plan year.

(c) Interest

The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under section 1082(b)(5) of this title with respect to the funding standard account.

(Pub. L. 93–406, title I, § 305, Sept. 2, 1974, 88 Stat. 873.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1082 of this title.

§ 1086. Effective dates

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b) Except as otherwise provided in subsections (c) and (d) of this section, in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee representatives and one or more employers, this part shall apply only with respect to plan years beginning after the earlier of the date specified in subparagraph (A) or (B) of section 1061(c)(1) of this title.

(2) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b) of this section.

(d) In the case of a plan the administrator of which elects under section 1017(d) of this Act to have the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit to apply to a plan year and to all subsequent plan years, this part shall apply to plan years beginning on the earlier of the first plan year to which such election applies or the first plan year determined under subsections (a), (b), and (c) of this section.

(e) In the case of a plan maintained by a labor organization which is exempt from tax under section 501(c)(5) of title 26 exclusively for the benefit of its employees and their beneficiaries, this part shall be applied by substituting for the term "December 31, 1975" in subsection (b) of this section, the earlier of—

(1) the date on which the second convention of such labor organization held after September 2, 1974, ends or

(2) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subsection (c) of this section be substituted.

(Pub. L. 93–406, title I, § 306, Sept. 2, 1974, 88 Stat. 874.)

REFERENCES IN TEXT

Section 1017 of this Act, referred to in subsec. (d), is section 1017 of Pub. L. 93–406, which is set out as an Effective Date; Transitional Rules note under section 410 of Title 26, Internal Revenue Code.

The Internal Revenue Code of 1954, referred to in subsec. (d) is classified generally to Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1061 of this title.

PART 4—FIDUCIARY RESPONSIBILITY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1002, 1132, 1201, 1304, 1342 of this title.

§ 1101. Coverage

(a) This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title), other than—

(1) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; or

(2) any agreement described in section 736 of title 26, which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest.

(b) For purposes of this part:

(1) In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the assets of such plan shall be deemed to include such security but shall not, solely by reason of such investment, be deemed to include any assets of such investment company.

(2) In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to include any assets of such insurer. For purposes of this paragraph:

(A) The term "insurer" means an insurance company, insurance service, or insurance organization, qualified to do business in a State.

(B) The term "guaranteed benefit policy" means an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account.

(Pub. L. 93-406, title I, § 401, Sept. 2, 1974, 88 Stat. 874.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b)(1), is act Aug. 22, 1940, ch. 686, title I, 54 Stat. 789, as amended, which is classified principally to subchapter I (§ 80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1003 of this title; title 26 section 4975.

§ 1102. Establishment of plan

(a) Named fiduciaries

(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this subchapter, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Requisite features of plan

Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this subchapter,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedures described in section 1105(c)(1) of this title),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Optional features of plan

Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 1105(c)(1) of this title, may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

(Pub. L. 93-406, title I, § 402, Sept. 2, 1974, 88 Stat. 875.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(2), (b)(1), in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1103, 1105, 1114 of this title.

§ 1103. Establishment of trust

(a) Benefit plan assets to be held in trust; authority of trustees

Except as provided in subsection (b) of this section, all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 1102(a) of this title or appointed by a person who is a named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that—

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this subchapter, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 1102(c)(3) of this title.

(b) Exceptions

The requirements of subsection (a) of this section shall not apply—

(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

(3) to a plan—

(i) some or all of the participants of which are employees described in section 401(c)(1) of title 26; or

(ii) which consists of one or more individual retirement accounts described in section 408 of title 26, to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of title 26, whichever is applicable;

(4) to a plan which the Secretary exempts from the requirement of subsection (a) of this section and which is not subject to any of the following provisions of this chapter—

(A) part 2 of this subtitle,

(B) part 3 of this subtitle, or

(C) subchapter III of this chapter; or

(5) to a contract established and maintained under section 403(b) of title 26 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of title 26.

(c) Assets of plan not to inure to benefit of employer; allowable purposes of holding plan assets

(1) Except as provided in paragraph (2) or (3) or subsection (d) of this section, or under sections 1342 and 1344 of this title (relating to termination of insured plans), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

(2)(A) In the case of a contribution which is made by an employer by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution.

(B) If a contribution is conditioned on qualification of the plan under section 401, 403(a), or 405(a) of title 26, and if the plan does not qualify, then paragraph (1) shall not prohibit the return of such contributions to the employer within one year after the date of denial of qualification of the plan.

(C) If a contribution is conditioned upon the deductibility of the contribution under section 404 of title 26, then, to the extent the deduction is disallowed, paragraph (1) shall not prohibit the return to the employer of such contribution (to the extent disallowed) within one year after the disallowance of the deduction.

(3) In the case of a contribution which would otherwise be an excess contribution (as defined in section 4972(b) of title 26) paragraph (1) shall not prohibit a correcting distribution with respect to such contribution from the plan to the employer to the extent permitted in such section to avoid payment of an excise tax on excess contributions under such section.

(d) Termination of plan

(1) Upon termination of a pension plan to which section 1321 of this title does not apply at the time of termination and to which this part applies (other than a plan to which no employer contributions have been made) the assets of the plan shall be allocated in accordance with the provisions of section 1344 of this title, except as otherwise provided in regulations of the Secretary.

(2) The assets of a welfare plan which terminates shall be distributed in accordance with the terms of the plan, except as otherwise provided in regulations of the Secretary.

(Pub. L. 93-406, title I, § 403, Sept. 2, 1974, 88 Stat. 876.)

REFERENCES IN TEXT

This subchapter, referred to in (a)(1) in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

This chapter, referred to in subsec. (b)(4) was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

Subchapter III of this chapter, referred to in subsec. (b)(4)(C), in the original read "title IV of this Act" meaning title IV of Pub. L. 93-406, which enacted subchapter III of this chapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1104, 1105, 1114 of this title.

§ 1104. Fiduciary duties

(a) Prudent man standard of care

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter.

(2) In the case of an eligible individual account plan (as defined in section 1107(d)(3) of this title), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 1107(d)(4) and (5) of this title).

(b) Indicia of ownership of assets outside jurisdiction of district courts

Except as authorized by the Secretary by regulations, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) Control over assets by participant or beneficiary

In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over the assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)—

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

(Pub. L. 93–406, title I, § 404, Sept. 2, 1974, 88 Stat. 877.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1)(D), in the original read "this title", meaning title I of Pub. L. 93–406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105, 1107 of this title.

§ 1105. Liability for breach of co-fiduciary

(a) Circumstances giving rise to liability

In addition to any liability which he may have under any other provisions of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b) Assets held by two or more trustees

(1) Except as otherwise provided in subsection (d) of this section and in section 1103(a)(1) and (2) of this title, if the assets of a plan are held by two or more trustees—

(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement, authorized by the trust instrument, allocating specific responsibilties, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) of this section or any other provision of this part.

(3)(A) In the case of a plan the assets of which are held in more than one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 1103(a)(1) of this title.

(c) Allocation of fiduciary responsibility; designated persons to carry out fiduciary responsibilities

(1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and (B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility

of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that—

(A) the named fiduciary violated section 1104(a)(1) of this title—

(i) with respect to such allocation or designation,

(ii) with respect to the establishment or implementation of the procedure under this paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a) of this section.

(3) For purposes of this subsection, the term "trustee responsibility" means any responsibility provided in the plan's trust instrument (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 1102(c)(3) of this title.

(d) Investment managers

(1) If an investment manager or managers have been appointed under section 1102(c)(3) of this title, then, notwithstanding subsections (a) (2) and (3) and subsection (b) of this section, no trustees shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee.

(Pub. L. 93-406, title I, § 405, Sept. 2, 1974, 88 Stat. 878.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1102, 1110, 1114 of this title; title 26 section 4975.

§ 1106. Prohibited transactions

(a) Transactions between plan and party in interest

Except as provided in section 1108 of this title:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107(a) of this title.

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 1107(a) of this title.

(b) Transactions between plan and fiduciary

A fiduciary with respect to a plan shall not—

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) Transfer of real or personal property to plan by party in interest

A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer.

(Pub. L. 93-406, title I, § 406, Sept. 2, 1974, 88 Stat. 879.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1108, 1114, 1132, 1203 of this title; title 26 section 4975.

§ 1107. Limitation with respect to acquisition and holding of employer securities and employer real property by certain plans

(a) Percentage limitation

Except as otherwise provided in this section and section 1114 of this title:

(1) A plan may not acquire or hold—

(A) any employer security which is not a qualifying employer security, or

(B) any employer real property which is not qualifying employer real property.

(2) A plan may not acquire any qualifying employer security or qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

(3)(A) After December 31, 1984, a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984, exceeds 10 percent of the greater of—

(i) the fair market value of the assets of the plan, determined on December 31, 1984, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(B) Subparagraph (A) of this paragraph shall not apply to any plan which on any date after December 31, 1974; and before January 1, 1985, did not hold employer securities or employer real property (or both) the aggregate fair market value of which determined on such date exceeded 10 percent of the greater of

(i) the fair market value of the assets of the plan, determined on such date, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(4)(A) After December 31, 1979, a plan may not hold any employer securities or employer real property in excess of the amount specified in regulations under subparagraph (B). This subparagraph shall not apply to a plan after the earliest date after December 31, 1974, on which it complies with such regulations.

(B) Not later than December 31, 1976, the Secretary shall prescribe regulations which shall have the effect of requiring that a plan divest itself of 50 percent of the holdings of employer securities and employer real property which the plan would be required to divest before January 1, 1985, under paragraph (2) or subsection (c) of this section (whichever is applicable).

(b) Exception

(1) Subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.

(2) Cross references.—

(A) For exemption from diversification requirements for holding of qualifying employer securities and qualifying employer real property by eligible individual account plans, see section 1104(a)(2) of this title.

(B) For exemption from prohibited transactions for certain acquisitions of qualifying employer securities and qualifying employer real property which are not in violation of 10 percent limitation, see section 1108(e) of this title.

(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 1114(c) of this title.

(c) Election

(1) A plan which makes the election, under paragraph (3) shall be treated as satisfying the requirement of subsection (a)(3) of this section if and only if employer securities held on any date after December 31, 1974 and before January 1, 1985 have a fair market value, determined as of December 31, 1974, not in excess of 10 percent of the lesser of—

(A) the fair market value of the assets of the plan determined on such date (disregarding any portion of the fair market value of employer securities which is attributable to appreciation of such securities after December 31, 1974) but not less than the fair market value of plan assets on January 1, 1975, or

(B) an amount equal to the sum of (i) the total amount of the contributions to the plan received after December 31, 1974, and prior to such date, plus (ii) the fair market value of the assets of the plan, determined on January 1, 1975.

(2) For purposes of this subsection, in the case of an employer security held by a plan after January 1, 1975, the ownership of which is derived from ownership of employer securities held by the plan on January 1, 1975, or from the exercise of rights derived from such ownership, the value of such security held after January 1, 1975, shall be based on the value as of January 1, 1975, of the security from which ownership was derived. The Secretary shall prescribe regulations to carry out this paragraph.

(3) An election under this paragraph may not be made after December 31, 1975. Such an election shall be made in accordance with regulations prescribed by the Secretary, and shall be irrevocable. A plan may make an election under this paragraph only if on January 1, 1975, the plan holds no employer real property. After such election and before January 1, 1985 the plan may not acquire any employer real property.

(d) Definitions

For purposes of this section—

(1) The term "employer security" means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. A contract to which section 1108(b)(5) of this title applies shall not be treated as a security for purposes of this section.

(2) The term "employer real property" means real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this section, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

(3)(A) The term "eligible individual account plan" means an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on September 2, 1974, and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in section 408 of title 26.

(B) Notwithstanding subparagraph (A), a plan shall be treated as an eligible individual account plan with respect to the acquisition or holding of qualifying employer real property or qualifying employer securities only if such plan explicitly provides for acquisition and holding of qualifying employer securities or qualifying employer real property (as the case may be). In the case of a plan in existence on September 2, 1974, this subparagraph shall not take effect until January 1, 1976.

(4) The term "qualifying employer real property" means parcels of employer real property—

(A) if a substantial number of the parcels are dispersed geographically;

(B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use;

(C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer); and

(D) if the acquisition and retention of such property comply with the provisions of this part (other than section 1104(a)(1)(B) of this title to the extent it requires diversification, and sections 1104(a)(1)(C), 1106 of this title, and subsection (a) of this section).

(5) The term "qualifying employer security" means an employer security which is stock or a marketable obligation (as defined in subsection (e) of this section).

(6) The term "employee stock ownership plan" means an individual account plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase both of which are qualified, under section 401 of title 26, and which is designed to invest primarily in qualifying employee securities, and

(B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(7) A corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of title 26, except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided in regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary. Regulations under this paragraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

(8) The Secretary may prescribe regulations specifying the extent to which conversions, splits, the exercise of rights, and similar transactions are not treated as acquisitions.

(e) Marketable obligations

For purposes of subsection (d)(5) of this section, the term "marketable obligation" means a bond, debenture, note, or certificate, or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

(Pub. L. 93-406, title I, § 407, Sept. 2, 1974, 88 Stat. 880.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1104, 1106, 1108, 1114, 1222 of this title; title 19 section 2373.

§ 1108. Exemptions from prohibited transactions

(a) Grant of exemptions

The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 1106 and 1107(a) of this title. Action under this subsection may be taken only after consultation and coordination with the Secretary of the Treasury. An exemption granted under this section shall not relieve a fiduciary from any other applicable provision of this chapter. The Secretary may not grant an exemption under this subsection unless he finds that such exemption is—

(1) administratively feasible,

(2) in the interests of the plan and of its participants and beneficiaries, and

(3) protective of the rights of participants and beneficiaries of such plan.

Before granting an exemption under this subsection from section 1106(a) or 1107(a) of this title, the Secretary shall publish notice in the Federal Register of the pendency of the exemption, shall require that adequate notice be given to interested persons, and shall afford interested persons opportunity to present views. The Secretary may not grant an exemption under this subsection from section 1106(b) of this title unless he affords an opportunity for a hearing and makes a determination on the record with respect to the findings required by paragraphs (1), (2), and (3) of this subsection.

(b) Enumeration of transactions exempted from section 1106 prohibitions

The prohibitions provided in section 1106 of this title shall not apply to any of the following transactions:

(1) Any loans made by the plan to parties in interest who are participants or beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis, (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees, (C) are made in accordance with specific provisions regarding such loans set forth in the plan, (D) bear a reasonable rate of interest, and (E) are adequately secured.

(2) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

(3) A loan to an employee stock ownership plan (as defined in section 1107(d)(6) of this title), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at an interest rate which is not in excess of a reasonable rate.

If the plan gives collateral to a party in interest for such loan, such collateral may consist only of qualifying employer securities (as defined in section 1107(d)(5) of this title).

(4) The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment.

(5) Any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State, if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a party in interest which is wholly owned (directly or indirectly) by the employer maintaining the plan, or by any person which is a party in interest with respect to the plan, but only if the total premiums and annuity consideration written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are parties in interest (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan).

(6) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans.

Such ancillary services shall not be provided at more than reasonable compensation.

(7) The exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion.

(8) Any transaction between a plan and (i) a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency or (ii) a pooled investment fund of an insurance company qualified to do business in a State, if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan.

(9) The making by a fiduciary of a distribution of the assets of the plan in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 1344 of this title (relating to allocation of assets).

(c) Fiduciary benefits and compensation not prohibited by section 1106

Nothing in section 1106 of this title shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with

the terms of the plan as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan; except that no person so serving who already receives full time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such plan, except for reimbursement of expenses properly and actually incurred; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Owner-employees; family members; shareholder employees

Section 1107(b) of this title and subsections (a), (b), (c), and (e) of this section shall not apply to any transaction in which a plan, directly or indirectly—

(1) lends any part of the corpus or income of the plan to;

(2) pays any compensation for personal services rendered to the plan to; or

(3) acquires for the plan any property from or sells any property to;

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of title 26), a member of the family (as defined in section 267(c)(4) of title 26) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of this subsection a shareholder employee (as defined in section 1379 of title 26) and a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of title 26) and an employer or association of employers which establishes such an account or annuity under section 408(c) of title 26 shall be deemed to be an owner-employee.

(e) Acquisition or sale by plan of qualifying employer securities; acquisition, sale, or lease by plan of qualifying employer real property

Sections 1106 and 1107 of this title shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 1107(d)(5) of this title) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 1107(d)(4) of this title)—

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 1107(e)(1) of this title),

(2) if no commission is charged with respect thereto, and

(3) if—

(A) the plan is an eligible individual account plan (as defined in section 1107(d)(3) of this title), or

(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 1107(a) of this title.

(Pub. L. 93-406, title I, § 408, Sept. 2, 1974, 88 Stat. 883.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1106, 1107 of this title; title 26 section 4975.

§ 1109. Liability for breach of fiduciary duty

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this subchapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

(Pub. L. 93-406, title I, § 409, Sept. 2, 1974, 88 Stat. 886.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1132 of this title.

§ 1110. Exculpatory provisions; insurance

(a) Except as provided in sections 1105(b)(1) and 1105(d) of this title, any provision in an agreement or instrument which purports to re-

lieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(b) Nothing in this subpart[1] shall preclude—

(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

(Pub. L. 93–406, title I, § 410, Sept. 2, 1974, 88 Stat. 886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1114 of this title.

§ 1111. Persons prohibited from holding certain positions

(a) Conviction or imprisonment

No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a-9(a)(1) of title 15, a violation of any provision of this chapter, a violation of section 186 of this title, a violation of chapter 63 of title 18, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or

(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this subchapter. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.

(b) Penalty

Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) Definitions

For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

(Pub. L. 93–406, title I, § 411, Sept. 2, 1974, 88 Stat. 887.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (a), is Pub. L. 86–257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title, and Tables volume.

This subchapter, referred to in subsec. (a), in the original read "this title", meaning title I of Pub. L. 93–406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1109 of this title.

§ 1112. Bonding

(a) Requisite bonding of plan officials

Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as "plan official") shall be

[1] So in original.

bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, and

(2) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Secretary, which amount shall be at least $1,000,000. Paragraph (2) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation, only if such bank or institution meets bonding or similar requirements under State law which the Secretary determines are at least equivalent to those imposed on banks by Federal law.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 percentum limitation of the preceding sentence. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the plan official, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) Unlawful acts

It shall be unlawful for any plan official to whom subsection (a) of this section applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) of this section and it shall be unlawful for any plan official of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) of this section have not been met.

(c) Conflict of interest prohibited in procuring bonds

It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Exclusiveness of statutory basis for bonding requirement for persons handling funds or other property of employee benefit plans

Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) of this section because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section including exempting a plan from the requirements of this section where he finds that (1) other bonding arrangements or (2) the overall financial condition of the plan would be adequate to protect the interests of the beneficiaries and participants. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

(Pub. L. 93-406, title I, § 412, Sept. 2, 1974, 88 Stat. 888.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1028 of this title.

§ 1113. Limitation of actions

(a)[1] No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a

[1] So in original. No subsec. (b) has been enacted.

report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this subchapter;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

(Pub. L. 93-406, title I, § 413, Sept. 2, 1974, 88 Stat. 889.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

§ 1114. Effective date

(a) Except as provided in subsections (b), (c), and (d) of this section, this part shall take effect on January 1, 1975.

(b)(1) The provisions of this part authorizing the Secretary to promulgate regulations shall take effect on September 2, 1974.

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 1102, 1103 (other than 1103(c)), 1105 (other than 1105(a) and (d)), and 1110(a) of this title, as it applies to any plan in existence on September 2, 1974, if he determines such postponement is (A) necessary to amend the instrument establishing the plan under which the plan is maintained and (B) not adverse to the interest of participants and beneficiaries.

(3) This part shall take effect on September 2, 1974, with respect to a plan which terminates after June 30, 1974, and before January 1, 1975, and to which at the time of termination section 1321 of this title applies.

(c) Sections 1106 and 1107(a) of this title (relating to prohibited transactions) shall not apply—

(1) until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of title 26 or the corresponding provisions of prior law);

(2) until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of title 26) or the corresponding provisions of prior law;

(3) until June 30, 1984, to the sale, exchange or other disposition of property described in paragraph (2) between a plan and a party in interest if—

(A) in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(4) until June 30, 1977, to the provision of services, to which paragraphs (1), (2), and (3) do not apply between a plan and a party in interest—

(A) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or

(B) if the party in interest ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if such provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of title 26) or the corresponding provisions of prior law; or

(5) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of such property in order to comply with the provisions of section 1107(a) of this title (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideration.

(d) Any election, or failure to elect, by a disqualified person under section 2003(c)(1)(B) of this Act shall be treated for purposes of this part (but not for purposes of section 1144 of this title) as an act or omission occurring before the effective date of this part.

(Pub. L. 93-406, title I, § 414, Sept. 2, 1974, 88 Stat. 889.)

REFERENCES IN TEXT

Section 2003(c)(1)(B) of this Act, referred to in subsec. (d), is section 2003(c)(1)(B) of Pub. L. 93-406, which is set out as an Effective Date; Savings Provisions note under section 4975 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1107 of this title.

PART 5—ADMINISTRATION AND ENFORCEMENT

§ 1131. Criminal penalties

Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $5,000

or imprisoned not more than one year, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $100,000.

(Pub. L. 93–406, title I, § 501, Sept. 2, 1974, 88 Stat. 891.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1028 of this title.

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (i) of this section.

(b) Plans qualified under Internal Revenue Code

In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of title 26 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) of this section with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if—

(1) requested by the Secretary of the Treasury, or

(2) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(c) Administrator's refusal to supply requested information

Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(d) Status of employee benefit plan as entity

(1) An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter.

(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) Amount in controversy; citizenship of parties

The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) Attorney's fees and costs

In any action under this subchapter by a participant, beneficiary, or fiduciary, the court in

its discretion may allow a reasonable attorney's fee and costs of action to either party.

(h) Service upon Secretary of Labor and Secretary of the Treasury

A copy of the complaint in any action under this subchapter by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) of this section which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) of this section on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) Administrative assessment of civil penalty

In the case of a transaction prohibited by section 1106 of this title by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved (as defined in section 4975(f)(4) of title 26); except that if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation, which regulations shall be consistent with section 4975(f)(5) of title 26) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of title 26.

(j) Direction and control of litigation by Attorney General

In all civil actions under this subchapter, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Jurisdiction of actions against the Secretary of Labor

Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this chapter, or to compel him to take action required under this subchapter, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

(Pub. L. 93-406, title I, § 502, Sept. 2, 1974, 88 Stat. 891.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(3)(B), (5), (c), (d)(2), (e), (g), (h), (j), (k), in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

This chapter, referred to in subsec. (k), was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1140 of this title.

§ 1133. Claims procedure

In accordance with regulations of the Secretary, every employee benefit plan shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

(Pub. L. 93-406, title I, § 503, Sept. 2, 1974, 88 Stat. 893.)

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1022 of this title.

§ 1134. Investigative authority

(a) Investigation and submission of reports, books, etc.

The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this subchapter or any regulation or order thereunder—

(1) to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this subchapter, and

(2) to enter such places, inspect such books and records and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this subchapter or any rule or regulation issued thereunder or if the entry is pursuant to an agreement with the plan.

The Secretary may make available to any person actually affected by any matter which is

the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter which may be the subject of such investigation; except that any information obtained by the Secretary pursuant to section 6103(g) of title 26 shall be made available only in accordance with regulations prescribed by the Secretary of the Treasury.

(b) Frequency of submission of books and records

The Secretary may not under the authority of this section require any plan to submit to the Secretary any books or records of the plan more than once in any 12 month period, unless the Secretary has reasonable cause to believe there may exist a violation of this subchapter or any regulation or order thereunder.

(c) Other provisions applicable relating to attendance of witnesses and production of books, records, etc.

For the purposes of any investigation provided for in this subchapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, records, and documents) are hereby made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. To the extent he considers appropriate, the Secretary may delegate his investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the appropriate Federal banking agency (as defined in section 1813(q) of title 12).

(Pub. L. 93-406, title I, § 504, Sept. 2, 1974, 88 Stat. 893.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1135 of this title.

§ 1135. Regulations

Subject to subchapter II of this chapter and section 1029 of this title, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this subchapter. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 1134(a) and (b) of this title).

(Pub. L. 93-406, title I, § 505, Sept. 2, 1974, 88 Stat. 894.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1136. Other agencies and departments

In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this subchapter and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this subchapter. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law.

(Pub. L. 93-406, title I, § 506, Sept. 2, 1974, 88 Stat. 894.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

§ 1137. Administration

(a) Subchapter II of chapter 5, and chapter 7, of title 5 (relating to administrative procedure), shall be applicable to this subchapter.

(b) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this subchapter or the In-

ternal Revenue Code of 1954 with respect to any employee benefit plan under which he is a participant or beneficiary, any employee organization of which he is a member, or any employer organization in which he has an interest. This subsection does not apply to an employee benefit plan which covers only employees of the United States.

(Pub. L. 93-406, title I, § 507(a), (c), Sept. 2, 1974, 88 Stat. 894.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

The Internal Revenue Code of 1954, referred to in subsec. (b), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

Section consists of subsecs. (a) and (c) of section 507 of Pub. L. 93-406. Subsec. (b) of section 507 of Pub. L. 93-406 amended section 5108 of Title 5, Government Organization and Employees.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

§ 1138. Appropriations

There are hereby authorized to be appropriated such sums as may be necessary to enable the Secretary to carry out his functions and duties under this chapter.

(Pub. L. 93-406, title I, § 508, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1139. Separability of provisions

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 93-406, title I, § 509, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1140. Interference with protected rights

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

(Pub. L. 93-406, title I, § 510, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

The Welfare and Pension Plans Disclosure Act, referred to in text, is Pub. L. 85-836, Aug. 28, 1958, 72 Stat. 997, which was classified generally to chapter 10 (§ 301 et seq.) of this title, and was repealed by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851 (Employee Retirement Income Security Act of 1974), effective Jan. 1, 1975. Such section 111(a)(1) also provided that the Welfare and Pension Plans Disclosure Act should continue to apply to any conduct and events which occurred before Jan. 1, 1975 (see section 1031 of this title). For complete classification of the Welfare and Pension Plans Disclosure Act to the Code prior to such repeal, see Tables volume.

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1141. Coercive interference

It shall be unlawful for any person through the use of fraud, force, violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce, or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.]. Any person who willfully violates this section shall be fined $10,000 or imprisoned for not more than one year, or both.

(Pub. L. 93–406, title I, § 511, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 93–406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

The Welfare and Pension Plans Disclosure Act, referred to in text, is Pub. L. 85–836, Aug. 28, 1958, 72 Stat. 997, as amended, which was classified generally to chapter 10 (§ 301 et seq.) of this title, and was repealed by Pub. L. 93–406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851 (Employee Retirement Income Security Act of 1974), effective Jan. 1, 1975. Such section 111(a)(1) also provided that the Welfare and Pension Plans Disclosure Act should continue to apply to any conduct and events which occurred before Jan. 1, 1975 (see section 1031 of this title). For complete classification of the Welfare and Pension Plans Disclosure Act to the Code prior to such repeal, see Tables volume.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1142. Advisory Council on Employee Welfare and Pension Benefit Plans

(a) Establishment; membership; terms; appointment and reappointment; vacancies; quorum

(1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter in this section referred to as the "Council") consisting of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be members of the same political party.

(2) Members shall be persons qualified to appraise the programs instituted under this chapter.

(3) Of the members appointed, three shall be representatives of employee organizations (at least one of whom shall be representative of any organization members of which are participants in a multiemployer plan) ; three shall be representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multi-employer plans); three representatives shall be appointed from the general public, one of whom shall be a person representing those receiving benefits from a pension plan; and there shall be one representative each from the field of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

(4) Members shall serve for terms of three years except that of those first appointed, five shall be appointed for terms of one year, five shall be appointed for terms of two years, and five shall be appointed for terms of three years. A member may be reappointed. A member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present and voting.

(b) Duties and functions

It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this chapter and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four times each year and at such other times as the Secretary requests. In his annual report submitted pursuant to section 1143(b) of this title, the Secretary shall include each recommendation which he has received from the Council during the preceding calendar year.

(c) Executive secretary; secretarial and clerical services

The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d) Compensation

(1) Members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council.

(2) While away from their homes or regular places of business in the performance of services for Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5.

(e) Termination

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

(Pub. L. 93–406, title I, § 512, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (b), was in the original "this Act", meaning Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

GS–18 of the General Schedule, referred to in subsec. (d)(1), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1143. Research, studies, and reports

(a) Authorization to undertake research and surveys

(1) The Secretary is authorized to undertake research and surveys and in connection therewith to collect, compile, analyze and publish data, information, and statistics relating to employee benefit plans, including retirement, deferred compensation, and welfare plans, and types of plans not subject to this chapter.

(2) The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (A) the effects of this subchapter upon the provisions and costs of pension plans, (B) the role of private pensions in meeting the economic security needs of the Nation, and (C) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial and actuarial characteristics and practices, and methods of encouraging the growth of the private pension system.

(3) The Secretary may, as he deems appropriate or necessary, undertake other studies relating to employee benefit plans, the matters regulated by this subchapter, and the enforcement procedures provided for under this subchapter.

(4) The research, surveys, studies, and publications referred to in this subsection may be conducted directly, or indirectly through grant or contract arrangements.

(b) Submission of annual report to Congress; contents

The Secretary shall submit annually a report to the Congress covering his administration of this subchapter for the preceding year, and including (1) an explanation of any variances or extensions granted under section 1030, 1057, 1083, or 1084 of this title and the projected date for terminating the variance; (2) the status of cases in enforcement status; (3) recommendations received from the Advisory Council during the preceding year; and (4) such information, data, research findings, studies, and recommendations for further legislation in connection with the matters covered by this subchapter as he may find advisable.

(c) Cooperation with Congress

The Secretary is authorized and directed to cooperate with the Congress and its appropriate committees, subcommittees, and staff in supplying data and any other information, and personnel and services, required by the Congress in any study, examination, or report by the Congress relating to pension benefit plans established or maintained by States or their political subdivisions.

(Pub. L. 93-406, title I, § 513, Sept. 2, 1974, 88 Stat. 896.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

This subchapter, referred to in subsecs. (a)(2), (3), (b), in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1142 of this title.

§ 1144. Other laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) of this section shall not apply to any generally applicable criminal law of a State.

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State

action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law.

(Pub. L. 93-406, title I, § 514, Sept. 2, 1974, 88 Stat. 897.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b)(2), (d), in the original read "this title", meaning title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

Subchapter III of this subchapter, referred to in subsec. (a)(4)(C), in the original read "title IV" meaning title IV of Pub. L. 93-406, which enacted subchapter III of this chapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

PROMULGATION OF REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1114 of this title.

SUBCHAPTER II—JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1135 of this title.

SUBTITLE A—JURISDICTION, ADMINISTRATION, AND ENFORCEMENT

§ 1201. Procedures in connection with the issuance of certain determination letters by the Secretary of the Treasury covering qualifications under Internal Revenue Code

(a) Additional material required of applicants

Before issuing an advance determination of whether a pension, profit-sharing, or stock bonues plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of title 26, the Secretary of the Treasury shall require the person applying for the determination to provide, in addition to any material and information necessary for such determination, such other material and information as may reasonably be made available at the time such application is made as the Secretary of Labor may require under subchapter I of this chapter for the administration of that subchapter. The Secretary of the Treasury shall also require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who qualifies as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of title 26 (relating to declaratory judgements in connection with the qualification of certain retirement plans)) of the application for a determination.

(b) Opportunity to comment on application

(1) Whenever an application is made to the Secretary of the Treasury for a determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of title 26, the Secretary shall upon request afford an opportunity to comment on the application at any time within 45 days after receipt thereof to—

(A) any employee or class of employee qualifying as an interested party within the meaning of the regulations referred to in subsection (a) of this section.

(B) the Secretary of Labor, and

(C) the Pension Benefit Guaranty Corporation.

(2) The Secretary of Labor may not request an opportunity to comment upon such an application unless he has been requested in writing to do so by the Pension Benefit Guaranty Corporation or by the lesser of—

(A) 10 employees, or

(B) 10 percent of the employees

who qualify as interested parties within the meaning of the regulations referred to in subsection (a) of this section. Upon receiving such a request, the Secretary of Labor shall furnish a copy of the request to the Secretary of the Treasury within 5 days (excluding Saturdays, Sundays, and legal public holidays (as set forth in section 6103 of title 5)).

(3) Upon receiving such a request from the Secretary of Labor, the Secretary of the Treasury shall furnish to the Secretary of Labor such information held by the Secretary of the Treasury relating to the application as the Secretary of Labor may request.

(4) The Secretary of Labor shall, within 30 days after receiving a request from the Pension Benefit Guaranty Corporation or from the necessary number of employees who qualify as interested parties, notify the Secretary of the Treasury, the Pension Benefit Guaranty Corporation, and such employees with respect to whether he is going to comment on the application to which the request relates and with respect to any matters raised in such request on which he is not going to comment. If the Secretary of Labor indicates in the notice required under the preceding sentence that he is not going to comment on all or part of the matters raised in such request, the Secretary of the Treasury shall afford the corporation, and such employees, an opportunity to comment on the

application with respect to any matter on which the Secretary of Labor has declined to comment.

(c) Intervention by Pension Benefit Guaranty Corporation or Secretary of Labor into declaratory judgment action under section 7476 of title 26, action by Corporation authorized

The Pension Benefit Guaranty Corporation and, upon petition of a group of employees referred to in subsection (b)(2) of this section, the Secretary of Labor, may intervene in any action brought for declaratory judgment under section 7476 of title 26 in accordance with the provisions of such section. The Pension Benefit Guaranty Corporation is permitted to bring an action under such section 7476 under such rules as may be prescribed by the United States Tax Court.

(d) Notification and information by Secretary of the Treasury to Secretary of Labor upon issuance by Secretary of the Treasury of a determination letter to applicant

If the Secretary of the Treasury determines that a plan or trust to which this section applies meets the applicable requirements of part I of subchapter D of chapter 1 of title 26 and issues a determination letter to the applicant, the Secretary shall notify the Secretary of Labor of his determination and furnish such information and material relating to the application and determination held by the Secretary of the Treasury as the Secretary of Labor may request for the proper administration of subchapter I of this chapter. The Secretary of Labor shall accept the determination of the Secretary of the Treasury as prima facie evidence of initial compliance by the plan with the standards of parts 2, 3, and 4 of subtitle B of subchapter I of this chapter. If an application for such a determination is withdrawn, or if the Secretary of the Treasury issues a determination that the plan or trust does not meet the requirements of such part I, the Secretary shall notify the Secretary of Labor of the withdrawal or determination.

(e) Effective date

This section does not apply with respect to an application for any plan received by the Secretary of the Treasury before the date on which section 410 of title 26 applies to the plan, or on which such section will apply if the plan is determined by the Secretary to be a qualified plan.

(Pub. L. 93–406, title III, § 3001, Sept. 2, 1974, 88 Stat. 995.)

REFERENCES IN TEXT

Subchapter I of this chapter, referred to in subsec. (a), in the original read "title I of this Act" meaning title I of Pub. L. 93–406, which enacted subchapter I of this chapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1140, 1141 of this title; title 26 section 7476.

§ 1202. Procedures with respect to continued compliance with Internal Revenue requirements relating to participation, vesting, and funding standards

(a) Notification by Secretary of the Treasury to Secretary of Labor of issuance of a preliminary notice of intent to disqualify or of commencement of proceedings to determine satisfaction of requirements

In carrying out the provisions of part I of subchapter D of chapter 1 of title 26 with respect to whether a plan or a trust meets the requirements of section 410(a) or 411 of title 26 (relating to minimum participation standards and minimum vesting standards, respectively), the Secretary of the Treasury shall notify the Secretary of Labor when the Secretary of the Treasury issues a preliminary notice of intent to disqualify related to the plan or trust or, if earlier, at the time of commencing any proceeding to determine whether the plan or trust satisfies such requirements. Unless the Secretary of the Treasury finds that the collection of a tax imposed under the Internal Revenue Code of 1954 is in jeopardy, the Secretary of the Treasury shall not issue a determination that the plan or trust does not satisfy the requirements of such section until the expiration of a period of 60 days after the date on which he notifies the Secretary of Labor of such review. The Secretary of the Treasury, in his discretion, may extend the 60-day period referred to in the preceding sentence if he determines that such an extension would enable the Secretary of Labor to obtain compliance with such requirements by the plan within the extension period. Except as otherwise provided in this chapter, the Secretary of Labor shall not generally apply part 2 of subtitle B of subchapter I of this chapter to any plan or trust subject to sections 410(a) and 411 of title 26, but shall refer alleged general violations of the vesting or participation standards to the Secretary of the Treasury. (The preceding sentence shall not apply to matters relating to individuals benefits.)

(b) Notification to Secretary of Labor before Secretary of the Treasury sends notice of deficiency under section 4971 of title 26; waiver of imposition of tax; requests for investigation; consultation

Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4971 of title 26 (relating to taxes on the failure to meet minimum funding standards), the Secretary of the Treasury shall notify the Secretary of Labor before sending a notice of deficiency with respect to any tax imposed under that section on an employer, and, in accordance with the provisions of subsection (d) of that section, afford the Secretary of Labor an opportunity to comment on the imposition of the tax in the case. The Secretary of the Treasury may waive the imposition of the tax imposed under section 4971(b) of title 26 in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be commenced expeditiously with respect to whether the tax

imposed under section 4971 of title 26 should be applied with respect to any employer to which the request relates. The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 412 of title 26 (relating to minimum funding standards) and with respect to the funding standards applicable under subchapter I of this chapter in order to coordinate the rules applicable under such standards.

(c) Extended application of regulations prescribed by Secretary of the Treasury relating to minimum participation standards, minimum vesting standards, and minimum funding standards

Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of title 26 (relating to minimum participation standards, minimum vesting standards, and minimum funding standards, respectively) shall also apply to the minimum participation, vesting, and funding standards set forth in parts 2 and 3 of subtitle B of subchapter I of this chapter. Except as otherwise expressly provided in this chapter, the Secretary of Labor shall not prescribe other regulations under such parts, or apply the regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, 412 of title 26 and applicable to the minimum participation, vesting, and funding standards under such parts in a manner inconsistent with the way such regulations apply under sections 410(a), 411, and 412 of title 26.

(d) Opportunity afforded Secretary of the Treasury to intervene in cases involving construction or application of minimum standards; review of briefs filed by Pension Benefit Guaranty Corporation or Secretary of Labor

The Secretary of Labor and the Pension Benefit Guaranty Corporation, before filing briefs in any case involving the construction or application of minimum participation standards, minimum vesting standards, or minimum funding standards under subchapter I of this chapter shall afford the Secretary of the Treasury a reasonable opportunity to review any such brief. The Secretary of the Treasury shall have the right to intervene in any such case.

(Pub. L. 93-406, title III, § 3002, Sept. 2, 1974, 88 Stat. 996.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (a), is classified generally to title 26, Internal Revenue Code.

This chapter, referred to in subsecs. (a), (c), was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

Subchapter I of this chapter, referred to in subsecs. (b) and (d), in the original read "title I of this Act" meaning title I of Pub. L. 93-406, which enacted subchapter I of this chapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 4971.

§ 1203. Procedures in connection with prohibited transactions

(a) Notification to Secretary of Labor; opportunity to comment on imposition of tax under section 4975 of title 26; waiver; requests for investigations

Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4975 of title 26 (relating to tax on prohibited transactions) the Secretary of the Treasury shall, in accordance with the provisions of subsection (h) of such section, notify the Secretary of Labor before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b) of such section, and, in accordance with the provisions of subsection (h) of such section, afford the Secretary an opportunity to comment on the imposition of the tax in any case. The Secretary of the Treasury shall have authority to waive the imposition of the tax imposed under section 4975(b) in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be carried out with respect to whether the tax imposed by section 4975 of title 26 should be applied to any person referred to in the request.

(b) Consultation

The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 4975 of title 26 (relating to tax on prohibited transactions) and with respect to the provisions of subchapter I of this chapter relating to prohibited transactions and exemptions therefrom in order to coordinate the rules applicable under such standards.

(c) Transmission of information to Secretary of the Treasury

Whenever the Secretary of Labor obtains information indicating that a party-in-interest or disqualified person is violating section 1106 of this title, he shall transmit such information to the Secretary of the Treasury.

(Pub. L. 93-406, title III, § 3003, Sept. 2, 1974, 88 Stat. 998.)

REFERENCES IN TEXT

Subchapter I of this chapter, referred to in subsec. (b), in the original read "title I of this Act" meaning title I of Pub. L. 93-406, which enacted subchapter I of this chapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 4975.

§ 1204. Coordination between the Department of the Treasury and the Department of Labor

(a) Whenever in this chapter or in any provision of law amended by this chapter the Secretary of the Treasury and the Secretary of Labor are required to carry out provisions relat-

ing to the same subject matter (as determined by them) they shall consult with each other and shall develop rules, regulations, practices, and forms which, to the extent appropriate for the efficient administration of such provisions, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden of compliance with such provisions by plan administrators, employers, and participants and beneficiaries.

(b) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary of the Treasury and the Secretary of Labor may make such arrangements or agreements for cooperation or mutual assistance in the performance of their functions under this chapter, and the functions of any such agencies as they find to be practicable and consistent with law. The Secretary of the Treasury and the Secretary of Labor may utilize, on a reimbursable or other basis, the facilities or services, of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services, of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary of the Treasury and the Secretary of Labor and, to the extent permitted by law, to provide such information and facilities as they may request for their assistance in the performance of their functions under this chapter. The Attorney General or his representative shall receive from the Secretary of the Treasury and the Secretary of Labor for appropriate action such evidence developed in the performance of their functions under this chapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law.

(Pub. L. 93–406, title III, § 3004, Sept. 2, 1974, 88 Stat. 998.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1024 of this title; title 26 sections 6057, 6058, 6059.

SUBTITLE B—JOINT PENSION, PROFIT-SHARING, AND EMPLOYEE STOCK OWNERSHIP PLAN TASK FORCE; STUDIES

PART 1—JOINT PENSION, PROFIT-SHARING, AND EMPLOYEE STOCK OWNERSHIP PLAN TASK FORCE

§ 1221. Establishment

The staffs of the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, the Joint Committee on Taxation, and the Committee on Finance and the Committee on Human Resources of the Senate shall carry out the duties assigned under this subchapter to the Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force. By agreement among the chairmen of such Committees, the Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force shall be furnished with office space, clerical personnel, and such supplies and equipment as may be necessary for the Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force to carry out its duties under this subchapter.

(Pub. L. 93–406, title III, § 3021, Sept. 2, 1974, 88 Stat. 999; Pub. L. 93–455, title VIII, § 803(i)(2)(A)(iii), title XIX, § 1907(a)(5), Oct. 4, 1976, 90 Stat. 1591, 1836; S. Res. 4, Feb. 4, 1977.)

AMENDMENTS

1976—Pub. L. 94–455, § 803(i)(2)(A)(iii), substituted "Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force" for "Joint Pension Task Force" wherever appearing.

CHANGE OF NAME

Joint Committee on Internal Revenue Taxation redesignated as the Joint Committee on Taxation by section 1907(a)(5) of Pub. L. 94–455.

The Committee on Labor and Public Welfare of the Senate was abolished and replaced by the Committee on Human Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1222 of this title.

§ 1222. Duties

(a) The Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force shall, within 24 months after September 2, 1974, make a full study and review of—

(1) the effect of the requirements of section 411 of title 26 and of section 1053 of this title to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements;

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under subchapter III of this chapter (relating to termination insurance) of plans established and maintained by small employers;

(4) the broadening of stock ownership, particularly with regard to employee stock ownership plans (as defined in section 4975(e)(7) of title 26 and section 1107(d)(6) of this title) and all other alternative methods for broadening stock ownership to the American labor force and others;

(5) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(6) such other matter as any of the committees referred to in section 1221 of this title may refer to it.

(b) The Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force

shall report the results of its study and review to each of the committees referred to in section 1221 of this title.

(Pub. L. 93-406, title III, § 3022, Sept. 2, 1974, 88 Stat. 999; Pub. L. 94-455, title VIII, § 803(i)(1), (2)(A)(iii), Oct. 4, 1976, 90 Stat. 1590, 1591.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsec. (a)(3), in the original read "title IV of this Act" meaning title IV of Pub. L. 93-406, which enacted subchapter III of this chapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455, § 803(i)(1), (2)(A)(iii), substituted "Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force" for "Joint Pension Task Force" in provision preceding par. (1), redesignated pars. (4) and (5) as (5) and (6), respectively, and added par. (4).

Subsec. (b). Pub. L. 94-455, § 803(i)(2)(A)(iii), substituted "Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force" for "Joint Pension Task Force".

PART 2—OTHER STUDIES

§ 1231. Congressional study

(a) The Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Finance and the Committee on Human Resources of the Senate shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of the United States, by any State (including the District of Columbia) or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Such study shall include an analysis of—

(1) the adequacy of existing levels of participation, vesting, and financing arrangements,

(2) existing fiduciary standards, and

(3) the necessity for Federal legislation and standards with respect to such plans.

In determining whether any such plan is adequately financed, each committee shall consider the necessity for minimum funding standards, as well as the taxing power of the government maintaining the plan.

(b) Not later than December 31, 1976, the Committee on Education and Labor and the Committee on Ways and Means shall each submit to the House of Representatives the results of the studies conducted under this section, together with such recommendations as they deem appropriate. The Committee on Finance and the Committee on Human Resources shall each submit to the Senate the results of the studies conducted under this section together with such recommendations as they deem appropriate not later than such date.

(Pub. L. 93-406, title III, § 3031, Sept. 2, 1974, 88 Stat. 999; S. Res. 4, Feb. 4, 1977.)

CHANGE OF NAME

The Committee on Labor and Public Welfare of the Senate was abolished and replaced by the Committee on Human Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

§ 1232. Protection for employees under Federal procurement, construction, and research contracts and grants

(a) Study and investigation by Secretary of Labor

The Secretary of Labor shall, during the 2-year period beginning on September 2, 1974, conduct a full and complete study and investigation of the steps necessary to be taken to insure that professional, scientific, and technical personnel and others working in associated occupations employed under Federal procurement, construction, or research contracts or grants will, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts, grants, or procurement policies. The Secretary of Labor shall report the results of his study and investigation to the Congress within 2 years after September 2, 1974. The Secretary of Labor is authorized, to the extent provided by law, to obtain the services of private research institutions and such other persons by contract or other arrangement as he determines necessary in carrying out the provisions of this section.

(b) Consultation

In the course of conducting the study and investigation described in subsection (a) of this section, and in developing the regulations referred to in subsection (c) of this section, the Secretary of Labor shall consult—

(1) with appropriate professional societies, business organizations, and labor organizations, and

(2) with the heads of interested Federal departments and agencies.

(c) Regulations

Within 1 year after the date on which he submits his report to the Congress under subsection (a) of this section, the Secretary of Labor shall, if he determines it to be feasible, develop regulations, which will provide the protection of pension and retirement rights and benefits referred to in subsection (a) of this section.

(d) Congressional review of regulations; resolution of disapproval

(1) Any regulations developed pursuant to subsection (c) of this section shall take effect if, and only if—

(A) the Secretary of Labor, not later than the day which is 3 years after September 2, 1974, delivers a copy of such regulations to the House of Representatives and a copy to the Senate, and

(B) before the close of the 120-day period which begins on the day on which the copies of such regulations are delivered to the House of Representatives and to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval.

(2) For purposes of this subsection, the term "resolution of disapproval" means only a reso-

lution of either House of Congress, the matter after the resolving clause of which is as follows: "That the——does not favor the taking effect of the regulations transmitted to the Congress by the Secretary of Labor on ——", the first blank space therein being filled with the name of the resolving House and the second blank space therein being filled with the day and year.

(3) A resolution of disapproval in the House of Representatives shall be referred to the Committee on Education and Labor. A resolution of disapproval in the Senate shall be referred to the Committee on Human Resources.

(4)(A) If the committee to which a resolution of disapproval has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution of disapproval.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution of disapproval shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

(7) Whenever the Secretary of Labor transmits copies of the regulations to the Congress, a copy of such regulations shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(8) The 120 day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(9) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in paragraph (2); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(Pub. L. 93-406, title III, § 3032, Sept. 2, 1974, 88 Stat. 1000; S. Res. 4, Feb. 4, 1977.)

CHANGE OF NAME

The Committee on Labor and Public Welfare of the Senate was abolished and replaced by the Committee on Human Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

SUBTITLE C—ENROLLMENT OF ACTUARIES

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1023 of this title; title 26 section 7701.

§ 1241. Joint Board for the Enrollment of Actuaries

The Secretary of Labor and the Secretary of the Treasury shall, not later than the last day of the first calendar month beginning after September 2, 1974, establish a Joint Board for the Enrollment of Actuaries (hereinafter in this part referred to as the "Joint Board").

(Pub. L. 93-406, title III, § 3041, Sept. 2, 1974, 88 Stat. 1002.)

§ 1242. Enrollment by Board; standards and qualifications; suspension or termination of enrollment

(a) The Joint Board shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans in which this chapter applies and, upon application by any individual, shall enroll such individual if the Joint Board finds that such individual satisfies such standards and qualifications. With respect to individuals applying for enrollment before January 1, 1976, such standards and qualifications shall include

a requirement for an appropriate period of responsible actuarial experience relating to pension plans. With respect to individuals applying for enrollment on or after January 1, 1976, such standards and qualifications shall include—

(1) education and training in actuarial mathematics and methodology, as evidenced by—

(A) a degree in actuarial mathematics or its equivalent from an accredited college or university,

(B) successful completion of an examination in actuarial mathematics and methodology to be given by the Joint Board, or

(C) successful completion of other actuarial examinations deemed adequate by the Joint Board, and

(2) an appropriate period of responsible actuarial experience.

Notwithstanding the preceding provisions of this subsection, the Joint Board may provide for the temporary enrollment for the period ending January 1, 1976, of actuaries under such interim standards as it deems adequate.

(b) The Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this section if the Joint Board finds that such individual—

(1) has failed to discharge his duties under this chapter, or

(2) does not satisfy the requirements for enrollment as in effect at the time of his enrollment.

The Joint Board may also, after notice and opportunity for hearing, suspend or terminate the temporary enrollment of an individual who fails to discharge his duties under this chapter or who does not satisfy the interim enrollment standards.

(Pub. L. 93-406, title III, § 3042, Sept. 2, 1974, 88 Stat. 1002.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

SUBCHAPTER III—PLAN TERMINATION INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1103, 1144, 1222 of this title; title 26 section 6103; title 45 sections 743, 775.

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

§ 1301. Definitions

(a) For purposes of this subchapter, the term—

(1) "administrator" means the person or persons described in paragraph (16) of section 1002 of this title;

(2) "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of title 26, determined without regard to section 1563(a)(4) and (e)(3)(C) of title 26, as one employer) who has made contributions to or under a plan under which more than one employer makes contributions for each of—

(A) the two immediately preceding plan years, or

(B) the second and third preceding plan years,

equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year;

(3) "multiemployer plan" means a multiemployer plan as defined in section 414(f) of title 26 (as added by this Act but without regard to whether such section is in effect on September 2, 1974);

(4) "corporation", except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 1302 of this title;

(5) "fund" means the appropriate fund established under section 1305 of this title;

(6) "basic benefits" means benefits guaranteed under section 1322 of this title other than under section 1322(c) of this title; and

(7) "non-basic benefits" means benefits guaranteed under section 1322(c) of this title.

(b) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of title 26. For purposes of this subchapter, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer. The regulations prescribed under the preceding sentence shall be consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under section 414(c) of title 26.

(Pub. L. 93-406, title IV, § 4001, Sept. 2, 1974, 88 Stat. 1003.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter, and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

This Act, referred to in subsec. (a)(3), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1366 of this title.

§ 1302. Pension Benefit Guaranty Corporation

(a) Establishment within Department of Labor

There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this subchapter, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this subchapter, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies, and

(3) to maintain premiums established by the corporation under section 1306 of this title at the lowest level consistent with carrying out its obligations under this subchapter.

(b) Powers of corporation

To carry out the purposes of this subchapter, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act [D.C. Code, § 29–1001 et seq.] and, in addition to any specific power granted to the corporation elsewhere in this subchapter or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by the board of directors, by laws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this Act;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this Act in any State or other jurisdiction without regard to qualification, licensing, or other requirements imposed by law in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein wherever situated;

(6) to appoint and fix the compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, and, to the extent desired by the corporation, require bonds for them and fix the penalty thereof, and to appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5;

(7) to utilize the personnel and facilities of any other agency or department of the United States Government, with or without reimbursement, with the consent of the head of such agency or department; and

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all others acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the corporation by this chapter.

(c) Board of directors; compensation; reimbursement for expenses

The board of directors of the corporation consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce Members of the Board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board. The Secretary of Labor is the chairman of the board of directors.

(d) Meetings

The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

(e) Adoption of bylaws; amendment, alteration; publication in the Federal Register

As soon as practicable, but not later than 180 days after September 2, 1974, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. The chairman of the board shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less often than once each year.

(f) Exemption from taxation

(1) The corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of any fund established under section 1305 of this title), shall be exempt from all taxation now or hereafter imposed by the United States (other than taxes imposed under chapter 21 of title 26, relating to Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.], and chapter 23 of title 26, relating to Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

(2) The receipts and disbursements of the corporation in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitations imposed by statute on budget outlays of the United States. Except as explicitly provided in this subchapter, the United States is not liable for any obligation or liability incurred by the corporation.

(g) Advisory committee to corporation

(1) There is established an advisory committee to the corporation, for the purpose of advising the corporation as to its policies and procedures relating to (A) the appointment of trust-

ees in termination proceedings, (B) investment of moneys, (C) whether plans being terminated should be liquidated immediately or continued in operation under a trustee, and (D) such other issues as the corporation may request from time to time. The advisory committee may also recommend persons for appointment as trustees in termination proceedings, make recommendations with respect to the investment of moneys in the funds, and advise the corporation as to whether a plan subject to being terminated should be liquidated immediately or continued in operation under a trustee.

(2) The advisory committee consists of seven members appointed, from among individuals recommended by the board of directors, by the President. Of the seven members, two shall represent the interests of employee organizations, two shall represent the interests of employers who maintain pension plans, and three shall represent the interests of the general public. The President shall designate one member as chairman at the time of the appointment of that member.

(3) Members shall serve for terms of 3 years each, except that, of the members first appointed, one of the members representing the interests of employee organizations, one of the members representing the interests of employers, and one of the members representing the interests of the general public shall be appointed for terms of 2 years each, one of the members representing the interests of the general public shall be appointed for a term of 1 year, and the other members shall be appointed to full 3-year terms. The advisory committee shall meet at least six times each year and at such other times as may be determined by the chairman or requested by any three members of the advisory committee.

(4) Members shall be chosen on the basis of their experience with employee organizations, with employers who maintain pension plans, with the administration of pension plans, or otherwise on account of outstanding demonstrated ability in related fields. Of the members serving on the advisory committee at any time, no more than four shall be affiliated with the same political party.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of a member of the advisory committee shall be filled in the manner in which that office was originally filled.

(6) The advisory committee shall appoint and fix the compensation of such employees as it determines necessary to discharge its duties, including experts and consultants in accordance with the provisions of section 3109 of title 5. The corporation shall furnish to the advisory committee such professional, secretarial, and other services as the committee may request.

(7) Members of the advisory committee shall, for each day (including traveltime) during which they are attending meetings or conferences of the committee or otherwise engaged in the business of the committee, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection.

(Pub. L. 93-406, title IV, § 4002(a), (b), (d)-(g)(2), (h), Sept. 2, 1974, 88 Stat. 1004, 1005; Pub. L. 94-455, title XV, § 1510(a), Oct. 4, 1976, 90 Stat. 1741.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b), (f)(2), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b), is act Aug. 6, 1962, 76 Stat. 265, Pub. L. 85-569, which enacted chapter 10 (§ 29-1001 et seq.) of Title 29 of the District of Columbia Code, Corporations.

This chapter, referred to in subsec. (b)(8), was in original "this Act", meaning Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

The Federal Insurance Contributions Act, referred to in subsec. (f)(1), is act Aug. 16, 1954, ch. 736, §§ 3101, 3102, 3111, 3112, 3121 to 3126, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3126 of Title 26 and Tables volume.

The Federal Unemployment Tax Act, referred to in subsec. (f)(1), is act Aug. 16, 1954, ch. 736, §§ 3301 to 3311, 68A Stat. 454, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables volume.

GS-18 of the General Schedule, referred to in subsec. (g)(7), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (g)(8), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

CODIFICATION

Section consists of subsecs. (a), (b), (d) to (g)(2), and (h) of section 1002 of Pub. L. 93-406. Subsec. (c) in the original amended section 5108 of Title 5, Government Organization and Employees, and subsec. (g)(3) in the original amended section 846 of Title 31, Money and Finance.

AMENDMENTS

1976—Subsec. (f)(1). Pub. L. 94-455 exempted the corporation from all taxation now or hereafter imposed by the United States (other than taxes imposed under chapter 21 of title 26, relating to Federal Insurance Contributions Act, and chapter 23 of title 26, relating to Federal Unemployment Tax Act).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1510(b) of Pub. L. 94-455 provided that: "The amendment made by subsection (a) [amending

subsec. (f)(1) of this section] shall take effect on September 2, 1974."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1301 of this title.

§ 1303. Operation of corporation

(a) Investigatory authority

The corporation may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this subchapter or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(b) Discovery powers vested in board members or officers designated by the chairman

For the purpose of any such investigation, or any other proceeding under this subchapter, any member of the board of directors of the corporation, or any officer designated by the chairman, may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the corporation deems relevant or material to the inquiry.

(c) Contempt

In the case of contumacy by, or refusal to obey a subpena issued to, any person, the corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue an order requiring such person to appear before the corporation, or member or officer designated by the corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

(d) Cooperation with other governmental agencies

In order to avoid unnecessary expense and duplication of functions among government agencies, the corporation may make such arrangements or agreements for cooperation or mutual assistance in the performance of its functions under this subchapter as is practicable and consistent with law. The corporation may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment. The head of each department, agency, or establishment of the United States shall cooperate with the corporation and, to the extent permitted by law, provide such information and facilities as it may request for its assistance in the performance of its functions under this subchapter. The Attorney General or his representative shall receive from the corporation for appropriate action such evidence developed in the performance of its functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this or any other Federal law.

(e) Civil actions by corporation; jurisdiction; process; expeditious handling of case; costs

(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to redress violations of the provisions of this subchapter.

(2) Except as otherwise provided in this subchapter, where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) The district courts of the United States shall have jurisdiction of actions brought by the corporation under this subchapter without regard to the amount in controversy in any such action.

(4) Upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation is a party, it is the duty of that court to assign such case for hearing at the earliest practical date and to cause such case to be in every way expedited.

(5) In any action brought under this subchapter, whether to collect premiums, penalties, and interest under section 1307 of this title or for any other purpose, the court may award to the corporation all or a portion of the costs of litigation incurred by the corporation in connection with such action.

(f) Civil actions against the corporation; appropriate court; jurisdiction

Any participant, beneficiary, plan administrator, or employee adversely affected by any action of the corporation, or by a receiver or trustee appointed by the corporation, with respect to a plan in which such participant, beneficiary, plan administrator or employer has an interest, may bring an action against the corporation, receiver, or trustee in the appropriate court. For purposes of this subsection the term "appropriate court" means the United States district court before which proceedings under section 1341 or 1342 of this title are being conducted, or if no such proceedings are being conducted the United States district court for the district in which the plan has its principal office, or the United States district court for the District of Columbia. The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(Pub. L. 93-406, title IV, § 4003, Sept. 2, 1974, 88 Stat. 1006.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b), (d), (e)(1), (2), (3), (5), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Gov-

ernment Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

§ 1304. Temporary authority for initial period

(a) Appointment of receiver

Notwithstanding anything to the contrary in this subchapter, the corporation may, upon receipt of notice that a plan is to be terminated or upon making a determination described in section 1342 of this title, appoint a receiver whose powers shall take effect immediately. The receiver shall assume control of such plan and its assets, protecting the interests of all interested persons during subsequent proceedings.

(b) Court approval of appointment of receiver

(1) Within a reasonable time, not exceeding 20 days, after the appointment of a receiver under subsection (a) of this section, the corporation shall apply to an appropriate United States district court for a decree approving such appointment. The court to which application is made shall issue a decree approving such appointment unless it determines that such approval would not be in the best interests of the participants and beneficiaries of the plan.

(2) If the court to which application is made under paragraph (1) dismisses the application with prejudice, or if the corporation fails to apply for a decree under paragraph (1) within 20 days after the appointment of the receiver, the receiver shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of the 20 day period. The receiver shall not be liable to the plan or to any other person for his acts as receiver other than for willful misconduct, or for conduct in violation of the provisions of part 4 of subpart B[1] of subchapter I of this chapter (except to the extent that the provisions of section 1342(d)(1)(A) of this title provide otherwise).

(c) Application to district court by plan administrator for appointment of receiver as alternative to appointment of receiver by corporation

The corporation is authorized, as an alternative to appointing a receiver under subsection (a) of this section, to direct a plan administrator to apply to a district court of the United States for the appointment of a receiver to assume control of the plan and its assets for the purpose of protecting the interests of all interested persons until the plan can be terminated under the provisions of this subchapter.

(d) Powers and functions of receiver

A receiver appointed under this section has the powers of a trustee under section 1342(d)(1)(A) and (B) of this title, and shall report to the corporation and the court on the plan from time to time as required by either the corporation or the court. As soon as practicable after his appointment, a receiver appointed under this section shall determine whether the assets of the plan are sufficient to discharge when due all obligations of the plan with respect to benefits guaranteed under this subchapter in accordance with the requirements of section 1344 of this title. If the determination of the receiver is approved by the corporation and the court, the receiver shall proceed as if he were a trustee appointed under section 1342 of this title.

(e) Initial period set at 270 days following September 2, 1974

A receiver may not be appointed under this section more than 270 days after September 2, 1974.

(f) Additional corporate powers during 270-day initial period

In addition to its other powers under this subchapter, for only the first 270 days after September 2, 1974, the corporation may—

(1) contract for printing without regard to the provisions of chapter 5 of title 44,

(2) waive any notice required under this subchapter if the corporation finds that a waiver is necessary or appropriate,

(3) extend the 90-day period referred to in section 1341(a) of this title for an additional 90 days without the agreement of the plan administrator and without application to a court as required under section 1341(d) of this title, and

(4) waive the application of the provisions of sections 1362, 1363, and 1364 of this title to, or reduce the liability imposed under such sections on, any employer with respect to a plan terminating during that 270 day period if the corporation determines that such waiver or reduction is necessary to avoid unreasonable hardship in any case in which the employer was not able, as a practical matter, to continue the plan.

(Pub. L. 93-406, title IV, § 4004, Sept. 2, 1974, 88 Stat. 1008.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (c), (d), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

§ 1305. Pension benefit guaranty funds

(a) Establishment of four revolving funds on books of Treasury of the United States

There are established on the books of the Treasury of the United States four revolving funds to be used by the corporation in carrying out its duties under this subchapter. One of the funds shall be used in connection with benefits guaranteed under sections 1322 and 1323 of this title (but not non-basic benefits) with respect to plans other than multiemployer plans, one of the funds shall be used with respect to such benefits guaranteed under such sections (other than non-basic benefits) for multiemployer plans, one of the funds shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 1322 of this title, for plans which are not multiemployer plans, and the remaining fund shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 1322 of this title, for multiemployer plans. Whenever in this subchapter reference is made to the term "fund" the reference shall be considered to refer to the appropriate fund established under this subsection.

[1] So in original. Probably should be "subtitle B".

(b) Credits to funds; availability of funds; investment of moneys in excess of current needs

(1) Each fund established under this section shall be credited with the appropriate portion of—

(A) funds borrowed under subsection (c) of this section,

(B) premiums, penalties, interest, and charges collected under this subchapter,

(C) the value of the assets of a plan administered under section 1342 of this title by a trustee to the extent that they exceed the liabilities of such plan,

(D) the amount of any employer liability payments under subtitle D of this subchapter, to the extent that such payments exceed liabilities of the plan (taking into account all other plan assets),

(E) earnings on investments of the fund or on assets credited to the fund under this subsection, and

(F) receipts from any other operations under this subchapter.

(2) Subject to the provisions of subsection (a) of this section, each fund shall be available—

(A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 1322 of this title,

(B) for making such payments as the corporation determines are necessary under section 1323 of this title,

(C) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best protect the interests of the corporation, participants in the plan being terminated, and other insured plans,

(D) to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c) of this section, and

(E) to pay the operational and administrative expenses of the corporation, including reimbursement of the expenses incurred by the Department of the Treasury in maintaining the funds, and the Comptroller General in auditing the corporation.

(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States but, until all borrowings under subsection (c) of this section have been repaid, the obligations in which such excess moneys are invested may not yield a rate of return in excess of the rate of interest payable on such borrowings.

(c) Authority to issue notes or other obligations; purchase by Secretary of the Treasury as public debt transaction

The corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(Pub. L. 93-406, title IV, § 4005, Sept. 2, 1974, 88 Stat. 1009.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b)(1)(B), (F), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

The Second Liberty Bond Act, as amended, referred to in subsec. (c), is act Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended. For classification of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1302, 1308, 1381 of this title.

§ 1306. Premium rates

(a)(1) The corporation shall prescribe such insurance premium rates and such coverage schedules for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this subchapter. The premium rates charged by the corporation for any period shall be uniform for all plans, other than multiemployer plans insured by the corporation, with respect to basic benefits guaranteed by it under section 1322 of this title, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under such section. The premium rates charged by the corporation for any period for non-basic benefits guaranteed by it shall be uniform by category of non-basic benefit guaranteed, shall be based on the risk insured in each category, and shall reflect the experience of the corporation (including reasonably anticipated experience) in guaranteeing such benefits.

(2) The corporation shall maintain separate coverage schedules for—

(A) basic benefits guaranteed by it under section 1322 of this title for—

(i) plans which are multiemployer plans, and

(ii) plans which are not multiemployer plans,

(B) employers insured under section 1323 of this title against liability under subtitle D of this subchapter, and

(C) non-basic benefits.

Except as provided in paragraph (3), the corporation may revise such schedules whenever it determines that revised rates are necessary, but a revised schedule described in subparagraph (A) shall apply only to plan years beginning more than 30 days after the date on which the Congress approves such revised schedule by a concurrent resolution.

(3) Except as provided in paragraph (4), the rate for all plans for benefits guaranteed under section 1322 of this title (other than non-basic benefits) with respect to plan years ending no more than 35 months after the effective date of this subchapter is—

(A) in the case of each plan which is not a multiemployer plan, an amount equal to one dollar for each individual who is a participant in such plan at any time during the plan year; and

(B) in the case of a multiemployer plan, an amount equal to fifty cents for each individual who is a participant in such plan at any time during such plan year.

The rate applicable under this paragraph to any plan the plan year of which does not begin on September 2, 1974, is a fraction of the rate described in the preceding sentence, the numerator of which is the number of months which end before the date on which the new plan year commences and the denominator of which is 12. The corporation is authorized to prescribe regulations under which the rate described in subparagraph (B) will not apply to the same participant in any multiemployer plan more than once for any plan year.

(4) Upon notification filed with the corporation not less than 60 days after the date on which the corporation publishes the rates applicable under paragraph (5), at the election of a plan the rate applicable to that plan with respect to the second full plan year to which this section applies beginning after September 2, 1974, shall be the greater of—

(A) an alternative rate determined under paragraph (5), or

(B) one-half of the rate applicable to the plan under paragraph (3).

In the case of a multiemployer plan, the rate prescribed by this paragraph (at the election of a plan) for the second full plan year is also the applicable rate for plan years succeeding the second full plan year and ending before the full plan year first commencing after December 31, 1977.

(5) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 1322 of this title the corporation shall establish such rates and bases in coverage schedules for plan years beginning 24 months or more after September 2, 1974, in accordance with the provisions of this paragraph. The corporation shall publish the rate schedules first applicable under this paragraph in the Federal Register not later than 270 days after September 2, 1974.

(A) The corporation may establish annual premiums composed of—

(i) a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent for plans which are not multiemployer plans and not in excess of 0.025 percent for multiemployer plans, and

(ii) an additional charge based on the rate applicable to the present value of the basic benefits of the plan which are guaranteed, determined separately for multiemployer plans and for plans which are not multiemployer plans.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level (determined separately for multiemployer plans and for plans which are not multiemployer plans) which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the premiums referred to in clause (i) of this subparagraph.

(B) The corporation may establish annual premiums based on—

(i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),

(ii) unfunded basic benefits guaranteed under this subchapter, but such premium rates shall not exceed the limitations applicable under subparagraph (A)(i), or

(iii) total guaranteed basic benefits, but such premium rates may not exceed the rates determined under subparagraph (A)(ii).

If the corporation uses 2 or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

(6) The corporation shall by regulation define the terms "value of the assets" and "present value of the benefits of the plan which are guaranteed" in a manner consistent with the purposes of this subchapter and the provisions of this section.

(b)(1) In order to place a revised coverage schedule (other than a schedule described in subsection (a)(2)(B) or (C) of this section in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Human Resources of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsis-

tent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the Congress favors the proposed revised coverage schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ——.", the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

(4) A resolution shall be referred to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Human Resources of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) When a committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(Pub. L. 93–406, title IV, § 4006, Sept. 2, 1974, 88 Stat. 1010; S. Res. 4, Feb. 4, 1977.)

REFERENCES IN TEXT

For effective date of this subchapter, referred to in subsec. (a)(3), see section 1381 of this title.

This subchapter, referred to in subsec. (a)(6), in the original read "this title" meaning title IV of Pub. L. 93–406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

CHANGE OF NAME

The Committee on Labor and Public Welfare of the Senate was abolished and replaced by the Committee on Human Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1302, 1362 of this title.

§ 1307. Payment of premiums

(a) Premiums payable when due; accrual

The plan administrator of each plan shall pay the premiums imposed by the corporation under this subchapter with respect to that plan when they are due. Any employer obtaining contingent liability coverage under section 1323 of this title shall pay the premiums imposed by the corporation under that section when due. Premiums under this subchapter are payable at the time, and on an estimated, advance, or other basis, as determined by the corporation. Premiums imposed by this subchapter on September 2, 1974 (applicable to that portion of any plan year during which such date occurs) are due within 30 days after such date. Premiums imposed by this subchapter on the first plan year commencing after September 2, 1974, are due within 30 days after such plan year commences. Premiums shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure, or until a trustee is appointed pursuant to section 1342 of this title, whichever is earlier.

(b) Late payment charge; waiver

If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the plan administrator obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the plan administrator, but the corporation may not grant a waiver if it appears that the plan administrator will be

unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of title 26 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

(c) Civil action to recover premium penalty and interest

If any plan administrator fails to pay a premium when due, the corporation is authorized to bring a civil action in any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or in which a defendant resides or is found for the recovery of the amount of the premium penalty, and interest, and process may be served in any other district. The district courts of the United States shall have jurisdiction over actions brought under this subsection by the corporation without regard to the amount in controversy.

(d) Basic benefits guarantee not stopped by plan administrator's failure to pay premiums when due

The corporation shall not cease to guarantee basic benefits on account of the failure of a plan administrator to pay any premium when due.

(Pub. L. 93–406, title IV, § 4007, Sept. 2, 1974, 88 Stat. 1013.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), in the original read "this title" meaning title IV of Pub. L. 93–406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1323 of this title.

§ 1308. Annual report by the corporation

As soon as practicable after the close of each fiscal year the corporation shall transmit to the President and the Congress a report relative to the conduct of its business under this subchapter for that fiscal year. The report shall include financial statements setting forth the finances of the corporation at the end of such fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year and shall include an actuarial evaluation of the expected operations and status of the funds established under section 1305 of this title for the next five years (including a detailed statement of the actuarial assumptions and methods used in making such evaluation).

(Pub. L. 93–406, title IV, § 4008, Sept. 2, 1974, 88 Stat. 1014.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title" meaning title IV of Pub. L. 93–406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

§ 1309. Portability assistance

The corporation shall provide advice and assistance to individuals with respect to evaluating the economic desirability of establishing individual retirement accounts or other forms of individual retirement savings for which a deduction is allowable under section 219 of title 26 and with respect to evaluating the desirability, in particular cases, of transferring amounts representing an employee's interest in a qualified plan to such an account upon the employee's separation from service with an employer.

(Pub. L. 93–406, title IV, § 4009, Sept. 2, 1974, 88 Stat. 1014.)

SUBTITLE B—COVERAGE

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1361 of this title.

§ 1321. Coverage

(a) Plans covered

Except as provided in subsection (b) of this section, this section applies to any plan (including a successor plan) which, for a plan year—

(1) is an employee pension benefit plan (as defined in paragraph (2) of section 1002 of this title) established or maintained—

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of title 26 (as in effect for the preceding 5 plan years of the plan) applicable to the plans described in paragraph (2) for the preceding 5 plan years; or

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of title 26, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of title 26.

For purposes of this subchapter, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) Plans not covered

This section does not apply to any plan—

(1) which is an individual account plan, as defined in paragraph (34) of section 1002 of this title,

(2) established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or to which the Railroad Retirement Act of 1935

or 1937 [45 U.S.C. 231 et seq.] applies and which is financed by contributions required under that Act,

(3) which is a church plan as defined in section 414(e) of title 26, unless that plan has made an election under section 410(d) of title 26, and has notified the corporation in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this part apply to it,

(4)(A) established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under the plan is made by employers of participants in the plan, or

(B) of which a trust described in section 501(c)(18) of title 26 is a part;

(5) which has not at any time after September 2, 1974, provided for employer contributions;

(6) which is unfunded and which is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(7) which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens;

(8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of title 26 on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is maintained for such purpose, that part shall be treated for purposes of this subchapter, as a separate plan which is an excess benefit plan;

(9) which is established and maintained exclusively for substantial owners as defined in section 1322(b)(6) of this title;

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act [22 U.S.C. 288 et seq.];

(11) maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35)(B) of section 1002 of this title; or

(13) established and maintained by a professional service employer which does not at any time after September 2, 1974, have more than 25 active participants in the plan.

(c) Definitions

(1) For purposes of subsection (b)(1) of this section, the term "individual account plan" does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b)(13) of this section.

(A) the term "professional service employer" means any proprietorship, partnership, corporation, or other association or organization (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

(B) the term "professional individuals" includes but is not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, phychologists, social or physical scientists, and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described in subsection (b)(13) of this section if, at any time after September 2, 1974, the plan has more than 25 active participants.

(Pub. L. 93-406, title IV, § 4021, Sept. 2, 1974, 88 Stat. 1014.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

The Railroad Retirement Act of 1935 or 1937, referred to in subsec. (b)(2), means act Aug. 29, 1935, ch. 812, 49 Stat. 867, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93-445, title I, Oct. 16, 1974, 88 Stat. 1305 and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45 Railroads. For complete classification of this Act to the Code, see Tables volume.

The International Organizations Immunities Act, referred to in subsec. (b)(10), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1023, 1103, 1114, 1322, 1323, 1341, 1343, 1344, 1363, 1365, 1381 of this title.

§ 1322. Benefits guaranteed

(a) Nonforfeitable benefits

Subject to the limitations contained in subsection (b) of this section, the corporation shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when section 1321 of this title applies to it.

(b) Exceptions

(1) Except to the extent provided in paragraph (8)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at

the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 1321(a) of this title) has been in effect includes the time a previously established plan (within the meaning of section 1321(a) of this title) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 1321 of this title does not apply on September 3, 1974, the 60 month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) of this section provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 430 of title 42) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in the calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits.

(4)(A) The actuarial value of a benefit, for purposes of this subsection, shall be determined in accordance with regulations prescribed by the corporation.

(B) For purposes of paragraph (3)—

(i) the term "gross income" means "earned income" within the meaning of section 911(b) of title 26 (determined without regard to any community property laws),

(ii) in the case of a participant in a plan under which contributions are made by more than one employer, amounts received as gross income from any employer under that plan shall be aggregated with amounts received from any other employer under that plan during the same period, and

(iii) any non-basic benefit shall be disregarded.

(5) Notwithstanding paragraph (3), no person shall receive from the corporation for basic benefits with respect to a participant an amount, or amounts, with an actuarial value which exceeds a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under paragraph (3)(B) at the time of the last plan termination.

(6)(A) For purposes of this subchapter, the term "substantial owner" means an individual who—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of title 26 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this subchapter an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) of this section (as limited under paragraph (3) of this subsection).

(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.

(7)(A) No benefits accrued under a plan after the date on which the Secretary of the Treasury issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401(a) of title 26, or that the plan does not meet the requirements of section 404(a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph does not apply if the Secretary subsequently issues a notice that such trust meets the requirements of section 401(a) of title 26 or that the plan meets the requirements of section 404(a)(2) of title 26 and if the Secretary determines that the trust or plan has taken action necessary to meet such requirements during the period between the issuance of the notice referred to in the preceding sentence and the issuance of the notice referred to in this sentence.

(B) No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury to determine that any trust under the plan has ceased to meet the requirements of section 401(a) of title 26 or that the plan has ceased to meet the requirements of section 404(a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is revoked as of the date it was first effective or amended to comply with such requirements.

(8) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of—

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) $20 per month,

multiplied by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect. In determining how many years a plan or amendment has been in effect for purposes of this paragraph, the first 12 months following the date on which the plan or amendment is made or first becomes effective (whichever is later) constitutes one year, and each consecutive period of 12 months thereafter constitutes an additional year. This paragraph does not apply to benefits payable under a plan unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter.

(c) Authorization to guarantee other classes of benefits

The corporation is authorized to guarantee the payment of such other classes of benefits and to establish the terms and conditions under which such other classes of benefits are guaranteed as it determines to be appropriate.

(Pub. L. 93-406, title IV, § 4022, Sept. 2, 1974, 88 Stat. 1016.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(6)(A), (8), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1305, 1306, 1321, 1343, 1344, 1346, 1361, 1381 of this title.

§ 1323. Contingent liability coverage

(a) Insurance

The corporation shall insure any employer who maintains or contributes to or under a plan to which section 1321 of this title applies against the payment of any liability imposed on him under subtitle D of this subchapter in the event of a termination of that plan. The corporation may develop arrangements with persons engaged in the business of providing insurance under which the insurance coverage described in the preceding sentence could be provided in whole or in part by such private insurers. In developing such arrangements the corporation shall devise a system under which risks are equitably distributed between the corporation and private insurers with respect to the classes of employers insured by each.

(b) Premium

The corporation is authorized to prescribe and collect in such manner as it determines to be appropriate premiums for insurance offered under subsection (a) of this section. If the corporation requires all employers to which this subchapter applies to purchase coverage under this section, the provisions of section 1307(b) and (c) of this title apply to the collection of premiums under this section. The premiums shall be determined by the corporation and revised by it from time to time as may be necessary, and shall be chargeable at a rate sufficient to fund any payment by the corporation becoming necessary under such coverage.

(c) Election of private coverage

If the corporation is, in its determination, able to develop a satisfactory arrangement with private insurers, within 36 months after September 2, 1974, to carry out the program of insurance authorized by this section in whole or in part, the corporation is authorized to require employers to elect coverage by such private insurance or by the corporation at such times and in such manner as the corporation determines necessary.

(d) Payment

No payment may be made by the corporation under any insurance provided by it under this section unless the premiums on such insurance have been paid by the employer and the insurance has been in effect (with respect to any benefit) for more than 60 months. The corporation is authorized to prescribe conditions under which no payment will be made by it under any insurance offered under this section without regard to whether premiums for such insurance have been paid.

(e) Purchase of insurance from other sources not precluded; limits and terms; reinsurance or other premium

Nothing in this section precludes the purchase by the employer of insurance from any other person, or limits the circumstances under which that insurance is payable, or in any way limits the terms and conditions of such insurance, except that the corporation may prescribe as a condition precedent to the purchase of such insurance the payment of a reinsurance premium or other reasonable fee under this section determined by the corporation to be necessary to assure the liquidity and adequacy of any fund or funds established to carry out the provisions of this section.

(f) Use of private industry guarantees, indemnities, or letters of credit

In carrying out its duties under subsection (a) of this section to develop arrangements with private insurers the corporation shall consider as an alternative or as a supplement to private insurance the feasibility of using private industry guarantees, indemnities, or letters of credit.

(Pub. L. 93-406, title IV, § 4023, Sept. 2, 1974, 88 Stat. 1019.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1305, 1306, 1307, 1362 of this title.

SUBTITLE C—TERMINATIONS

§ 1341. Termination by plan administrator

(a) Filing of notice that plan is to be terminated

Before the effective date of the termination of a plan, the plan administrator shall file a notice with the corporation that the plan is to be terminated on a proposed date (which may not be earlier than 10 days after the filing of the notice), and for a period of 90 days after the proposed termination date the plan administrator shall pay no amount pursuant to the termination procedure of the plan unless, before the expiration of such period, he receives a notice of sufficiency under subsection (b) of this section. Upon receiving such a notice, the plan administrator may proceed with the termination of the plan in a manner consistent with this subtitle.

(b) Notice of sufficiency

If the corporation determines that, after application of section 1344 of this title, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator of such determination as soon as practicable.

(c) Finding and notice of inability to determine that assets of plan are sufficient

If, within such 90-day period, the corporation finds that it is unable to determine that, if the assets of the plan are allocated in accordance with the provisions of section 1344 of this title, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator within such 90-day period of that finding. When the corporation issues a notice under this subsection, it shall commence proceedings in accordance with the provisions of section 1342 of this title. Upon receiving a notice under this subsection, the plan administrator shall refrain from taking any action under the proposed termination.

(d) Extension of 90-day period

The corporation and the plan administrator may agree to extend the 90-day period provided by this section by a written agreement signed by the corporation and the plan administrator before the expiration of the 90-day period, or the corporation may apply to an appropriate court (as defined in section 1342(g) of this title) for an order extending the 90-day period provided by this section. The 90-day period shall be extended as provided in the agreement or in any court order obtained by the corporation. The 90-day period may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 90-day period, or by subsequent order of the court. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator or as specified in the court order.

(e) Finding after authorized commencement of termination that plan is unable to pay basic benefits when due

If, after the plan administrator has begun to terminate the plan as authorized by this section, the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay basic benefits when due, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall institute appropriate proceedings under section 1342 of this title. The plan administrator terminating a plan shall furnish such reports to the corporation as it may require for purposes of its duties under this section.

(f) Amendment of plan with respect to which basic benefits are guaranteed

For purposes of subsection (a) of this section, a plan with respect to which basic benefits are guaranteed shall be treated as terminated upon the adoption of an amendment to such plan, if, after giving effect to such amendment, the plan is a plan described in section 1321(b)(1) of this title.

(g) Petition to appropriate court for appointment of trustee

Notwithstanding any other provision of this subchapter, a plan administrator or the corporation may petition the appropriate court for the appointment of a trustee in accordance with the provisions of section 1342 of this title if the interests of the participants and beneficiaries would be better served by the appointment of the trustee.

(Pub. L. 93-406, title IV, § 4041, Sept. 2, 1974, 88 Stat. 1020.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (g), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1304, 1348 of this title.

§ 1342. Termination by corporation

(a) Authority to institute proceedings to terminate a plan

The corporation may institute proceedings under this section to terminate a plan whenever it determines that—

(1) the plan has not met the minimum funding standard required under section 412 of title 26, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of title 26 has been mailed with respect to the tax imposed under section 4971(a) of title 26,

(2) the plan is unable to pay benefits when due,

(3) the reportable event described in section 1343(b)(7) of this title has occurred, or

(4) the possible long-run loss of the corporation with respect to the plan may reasonably

be expected to increase unreasonably if the plan is not terminated.

The corporation may prescribe a simplified procedure to follow in terminating small plans as long as that procedure includes substantial safeguards for the rights of the participants and beneficiaries under the plans, and for the employers who maintain such plans (including the requirement for a court decree under subsection (c) of this section). The corporation is authorized to pool the assets of such small plans for purposes of administration and such other purposes, not inconsistent with its duties to the plan participants and the employer maintaining the plan under this subchapter, as it determines to be required for the efficient administration of this subchapter.

(b) Appointment of trustee

Whenever the corporation makes a determination under subsection (a) of this section with respect to a plan it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determination is made pending the issuance of a decree under subsection (c) of this section ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan consents to the appointment of a trustee, or fails to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer the plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary. The corporation may request that it be appointed as trustee of a plan in any case.

(c) Adjudication that plan must be terminated

If the corporation has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subsection (b) of this section) has determined that the plan should be terminated, it may, upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants and to avoid any further deterioration of the financial condition of the plan or any further increase in the liability of the fund. If the trustee appointed under subsection (b) of this section disagrees with the determination of the corporation under the preceding sentence he may intervene in the proceeding relating to the application for the decree, or make application for such decree himself. Upon granting a decree for which the corporation or trustee has applied under this subsection the court shall authorize the trustee appointed under subsection (b) of this section (or appoint a trustee if one has not been appointed under such subsection and authorize him) to terminate the plan in accordance with the provisions of this subtitle. If the corporation and the plan administrator agree that a plan should be terminated and agree to the appointment of a trustee without proceeding in accordance with the requirements of this subsection (other than this sentence) the trustee shall have the power described in subsection (d)(1) of this section and, in addition to any other duties imposed on the trustee under law or by agreement between the corporation and the plan administrator, the trustee is subject to the duties described in subsection (d)(3) of this section. Whenever a trustee appointed under this subchapter is operating a plan with discretion as to the date upon which final distribution of the assets is to be commenced, the trustee shall notify the corporation at least 10 days before the date on which he proposes to commence such distribution.

(d) Powers of trustee

(1)(A) A trustee appointed under subsection (b) of this section shall have the power—

(i) to do any act authorized by the plan or this subchapter to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee;

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan, regulations of the corporation, and applicable rules of law;

(iv) to limit payment of benefits under the plan to basic benefits or to continue payment of some or all of the benefits which were being paid prior to his appointment; and

(v) to do such other acts as he deems necessary to continue operation of the plan without increasing the potential liability of the corporation, if such acts may be done under the provisions of the plan.

If the court to which application is made under subsection (c) of this section dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) of this section, within 30 days after the date on which the trustee is appointed under subsection (b) of this section, the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct, or for conduct in violation of the provisions of part 4 of subtitle B of subchapter I of this chapter (except as provided in subsection (d)(1)(A)(v) of this section). The 30-day period referred to in this subparagraph may be extended as provided by agreement between the plan administrator and the corporation or by court order obtained by the corporation.

(B) If the court to which an application is made under subsection (c) of this section issues the decree requested in such application, in addition to the powers described in subparagraph (A), the trustee shall have the power—

(i) to pay benefits under the plan in accordance with the allocation requirements of section 1344 of this title;

(ii) to collect for the plan any amounts due the plan;

(iii) to receive any payment made by the corporation to the plan under this subchapter;

(iv) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan, except to the extent that

the corporation is an adverse party in a suit or proceeding;

(v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court;

(vi) to liquidate the plan assets;

(vii) to recover payments under section 1345(a) of this title; and

(viii) to do such other acts as may be necessary to comply with this subchapter or any order of the court and to protect the interests of plan participants and beneficiaries.

(2) As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this subchapter to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term "interested party" means—

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant, and

(C) each employer who may be subject to liability under section 1362, 1363, or 1364 of this title.

(3) Except to the extent inconsistent with the provisions of this chapter, or as may be otherwise ordered by the court, a trustee appointed under this section shall be subject to the same duties as a trustee appointed under section 75 of title 11, and shall be, with respect to the plan, a fiduciary within the meaning of paragraph (21) of section 1002 of this title and under section 4975(e) of title 26 (except to the extent that the provisions of this subchapter are inconsistent with the requirements applicable under part 4 of subtitle B of subchapter I of this chapter and of such section 4975).

(e) Filing of application notwithstanding pendency of other proceedings

An application by the corporation under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) Exclusive jurisdiction; stay of other proceedings

Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of bankruptcy and of a court in a proceeding under chapter X of title 11. Pending an adjudication under subsection (c) of this section such court shall stay, and upon appointment by it of a trustee, as provided in this section such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

(g) Venue

An action under this subsection may be brought in the judicial district where the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

(h) Compensation of trustee and professional service personnel appointed or retained by trustee

(1) The amount of compensation paid to each trustee appointed under the provisions of this subchapter shall require the prior approval of the corporation, and, in the case of a trustee appointed by a court, the consent of that court.

(2) Trustees shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel in accordance with regulations prescribed by the corporation.

(Pub. L. 93–406, title IV, § 4042, Sept. 2, 1974, 88 Stat. 1021.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (d)(1)(B)(iii), (2), (h), in the original read "this title" meaning title IV of Pub. L. 93–406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

This chapter, referred to in subsec. (d)(3), was in the original "this Act", meaning Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1103, 1104, 1303, 1304, 1305, 1307, 1341, 1344, 1347, 1348 of this title.

§ 1343. Reportable events

(a) Notification that event has occurred

Within 30 days after the plan administrator knows or has reason to know that a reportable event described in subsection (b) of this section has occurred, he shall notify the corporation that such event has occurred. The corporation is authorized to waive the requirement of the preceding sentence with respect to any or all reportable events with respect to any plan, and to require the notification to be made by including the event in the annual report made by the plan. Whenever an employer making contributions under a plan to which section 1321 of this title applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.

(b) Enumeration of reportable events

For purposes of this section a reportable event occurs—

(1) when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 1321(a)(2) of this title, or when the Secretary of Labor determines the plan is not in compliance with subchapter I of this chapter;

(2) when an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased;

(3) when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year;

(4) when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of title 26, but the occurrence of such a termination or partial termination does not, by itself, constitute or require a termination of a plan under this subchapter;

(5) when the plan fails to meet the minimum funding standards under section 412 of title 26 (without regard to whether the plan is a plan described in section 1321(a)(2) of this title) or under section 1082 of this title;

(6) when the plan is unable to pay benefits thereunder when due;

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section 1322(b)(6) of this title if—

(A) such distribution has a value of $10,000 or more;

(B) such distribution is not made by reason of the death of the participant; and

(C) immediately after the distribution, the plan has nonforfeitable benefits which are not funded;

(8) when a plan merges, consolidates, or transfers its assets under section 1058 of this title, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 1030 of this title; or

(9) when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.

For purposes of paragraph (7), all distributions to a participant within any 24-month period are treated as a single distribution.

(c) Notification to corporation by Secretary of the Treasury

The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (b) of this section occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

(d) Notification to corporation by Secretary of Labor

The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (5), or (8) of subsection (b) of this section occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

(Pub. L. 93-406, title IV, § 4043, Sept. 2, 1974, 88 Stat. 1024.)

REFERENCES IN TEXT

Subchapter I of this chapter, referred to in subsec. (b)(1), in the original read "title I of this Act", meaning title I of Pub. L. 93-406, which enacted subchapter I of this chapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

This subchapter, referred to in subsec. (b)(4), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1342, 1345, 1365 of this title.

§ 1344. Allocation of assets

(a) Order of priority of participants and beneficiaries

In the case of the termination of a defined benefit plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) First, to that portion of each individual's accured[1] benefit which is derived from the participant's contributions to the plan which were not mandatory contributions.

(2) Second, to that portion of each individual's accrued benefit which is derived from the participant's mandatory contributions.

(3) Third, in the case of benefits payable as an annuity—

(A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least,

(B) in the case of a participant's or beneficiary's benefit (other than a benefit described in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(4) Fourth—

(A) to all other benefits (if any) of individuals under the plan guaranteed under this subchapter (determined without regard to section 1322(b)(5) of this title), and

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 1322(b)(6) of this title did not apply.

[1] So in original. Probably should be "accrued".

For purposes of this paragraph, section 1321 of this title shall be applied without regard to subsection (c) thereof.

(5) Fifth, to all other nonforfeitable benefits under the plan.

(6) Sixth, to all other benefits under the plan.

(b) Adjustment of allocations; reallocations; mandatory contributions; establishment of subclasses and categories

For purposes of subsection (a) of this section—

(1) The amount allocated under any paragraph of subsection (a) of this section with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of subsection (a) of this section.

(2) If the assets available for allocation under any paragraph of subsection (a) of this section (other than paragraphs (5) and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) of this section are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

(A) If this paragraph applies, except as provided in subparagraph (B), the assets shall be allocated to the benefits of individuals described in such paragraph (5) on the basis of the benefits of individuals which would have been described in such paragraph (5) under the plan as in effect at the beginning of the 5-year period ending on the date of plan termination.

(B) If the assets available for allocation under subparagraph (A) are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph (A), benefits of individuals described in such subparagraph shall be determined on the basis of the plan as amended by the most recent plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph (A) and any assets remaining to be allocated under such subparagraph shall be allocated under subparagraph (A) on the basis of the plan as amended by the next succeeding plan amendment effective during such period.

(4) If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of title 26 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a), 403(a), or 405(a) of title 26, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) of this section shall be reallocated to the extent necessary to avoid such discrimination.

(5) The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

(6) A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) of this section in accordance with regulations prescribed by the corporation.

(c) Increase or decrease in value of assets

Any increase or decrease in the value of the assets of a plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 1342(b) of this title or (2) the date on which the plan is terminated is to be allocated between the plan and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator in any other case. Any increase or decrease in the value of the assets of a plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation.

(d) Distribution of residual assets; remaining assets

(1) Any residual assets of a plan may be distributed to the employer if—

(A) all liabilities of the plan to participants and their beneficiaries have been satisfied,

(B) the distribution does not contravene any provision of law, and

(C) the plan provides for such a distribution in these circumstances.

(2) Notwithstanding the provisions of paragraph (1), if any assets of the plan attributable to employee contributions, remain after all liabilities of the plan to participants and their beneficiaries have been satisfied, such assets shall be equitably distributed to the employees who made such contributions (or their beneficiaries) in accordance with their rate of contributions.

(Pub. L. 93-406, title IV, § 4044, Sept. 2, 1974, 88 Stat. 1025.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(4)(A), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1023, 1103, 1104, 1108, 1304, 1341, 1342, 1346 of this title; title 26 section 4975.

§ 1345. Recapture of payments

(a) Authorization to recover benefits

Except as provided in subsection (c) of this section, the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b) of this section) of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated.

(b) Recoverable amount

For purposes of subsection (a) of this section the recoverable amount is the excess of the amount determined under paragraph (1) over the amount determined under paragraph (2).

(1) The amount determined under this paragraph is the sum of the amount of the actual payments received by the participant within the 3-year period.

(2) The amount determined under this paragraph is the sum of—

(A) the sum of the amount such participant would have received during each consecutive 12-month period within the 3 years if the participant received the benefit in the form described in paragraph (3),

(B) the sum for each of the consecutive 12-month periods of the lesser of—

(i) the excess, if any, of $10,000 over the benefit in the form described in paragraph (3), or

(ii) the excess of the actual payment, if any, over the benefit in the form described in paragraph (3), and

(C) the present value at the time of termination of the participant's future benefits guaranteed under this subchapter as if the benefits commenced in the form described in paragraph (3).

(3) The form of benefit for purposes of this subsection shall be the monthly benefit the participant would have received during the consecutive 12-month period, if he had elected at the time of the first payment made during the 3-year period, to receive his interest in the plan as a monthly benefit in the form of a life annuity commencing at the time of such first payment.

(c) Payments made on or after death or disability of participant; waiver of recovery in case of hardship

(1) In the event of a distribution described in section 1343(b)(7) of this title the 3-year period referred to in subsection (b) of this section shall not end sooner than the date on which the corporation is notified of the distribution.

(2) The trustee shall not recover any payment made from a plan after or on account of the death of a participant, or to a participant who is disabled (within the meaning of section 72(m)(7) of title 26).

(3) The corporation is authorized to waive, in whole or in part, the recovery of any amount which the trustee is authorized to recover for the benefit of a plan under this section in any case in which it determines that substantial economic hardship would result to the participant or his beneficiaries from whom such amount is recoverable.

(Pub. L. 93-406, title IV, § 4045, Sept. 2, 1974, 88 Stat. 1027.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(2)(C), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1342 of this title; title 26 section 6511.

§ 1346. Reports to trustee

The corporation and the plan administrator of any plan to be terminated under this subtitle shall furnish to the trustee such information as the corporation or the plan administrator has and, to the extent practicable, can obtain regarding—

(1) the amount of benefits payable with respect to each participant under a plan to be terminated,

(2) the amount of benefits guaranteed under section 1322 of this title which are payable with respect to each participant in the plan,

(3) the present value, as of the time of termination, of the aggregate amount of benefits payable under section 1322 of this title (determined without regard to section 1322(b)(5) of this title),

(4) the fair market value of the assets of the plan at the time of termination,

(5) the computations under section 1344 of this title, and all actuarial assumptions under which the items described in paragraphs (1) through (4) were computed, and

(6) any other information with respect to the plan the trustee may require in order to terminate the plan.

(Pub. L. 93-406, title IV, § 4046, Sept. 2, 1974, 88 Stat. 1028.)

§ 1347. Restoration of plans

Whenever the corporation determines that a plan which is to be terminated, or which is in the process of being terminated, under this subtitle should not be terminated as a result of such circumstances as the corporation determines to be relevant, the corporation is authorized to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated. In the case of a plan which has been terminated under section 1342 of this title the corporation is authorized in any such case in which the corporation determines such action to be appropriate and consistent with its duties under this subchapter, to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator of control of part or all of the remaining assets and liabilities of the plan.

(Pub. L. 93-406, title IV, § 4047, Sept. 2, 1974, 88 Stat. 1028.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

§ 1348. Date of termination

For purposes of this subchapter the date of termination is—

(1) in the case of a plan terminated in accordance with the provisions of section 1341 of this title, the date established by the plan administrator and agreed to by the corporation,

(2) in the case of a plan terminated in accordance with the provisions of section 1342 of this title, the date established by the corporation and agreed to by the plan administrator, or

(3) in the case of a plan terminated in accordance with the provisions of either section in any case in which no agreement is reached between the plan administrator and the corporation (or the trustee), the date established by the court.

(Pub. L. 93-406, title IV, § 4048, Sept. 2, 1974, 88 Stat. 1026.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1381 of this title.

SUBTITLE D—LIABILITY

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1306, 1323, 1381 of this title.

§ 1361. Amounts payable by corporation

The corporation shall pay benefits under a plan terminated under this subchapter subject to the limitations and requirements of subtitle B of this subchapter. Amounts guaranteed by the corporation under section 1322 of this title shall be paid by the corporation out of the appropriate fund.

(Pub. L. 93-406, title IV, § 4061, Sept. 2, 1974, 88 Stat. 1029.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

§ 1362. Liability of employer

(a) Employers covered

This section applies to any employer who maintained a plan (other than a multiemployer plan) at the time it was terminated, but does not apply—

(1) to an employer who maintained a plan with respect to which he paid the annual premium described in section 1306(a)(2)(B) of this title for each of the 5 plan years immediately preceding the plan year during which the plan terminated unless the conditions imposed by the corporation on the payment of coverage under section 1323 of this title do not permit such coverage to apply under the circumstances, or

(2) to the extent of any liability arising out of the insolvency of an insurance company with respect to an insurance contract.

(b) Amount of liability

Any employer to which this section applies shall be liable to the corporation, in an amount equal to the lesser of—

(1) the excess of—

(A) the current value of the plan's benefits guaranteed under this subchapter on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section.

(c) Net worth of employer

For purposes of subsection (b)(2) of this section the net worth of an employer is—

(1) determined on whatever basis best reflects, in the determination of the corporation, the current status of the employer's operations and prospects at the time chosen for determining the net worth of the employer, and

(2) increased by the amount of any transfers of assets made by the employer determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under the Bankruptcy Act [11 U.S.C. 1 et seq.] if the employer were the subject of a proceeding under that Act.

(d) Corporate reorganizations

For purposes of this section the following rules apply in the case of certain corporate reorganizations:

(1) If an employer ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the employer to whom this section applies.

(2) If an employer ceases to exist by reason of a liquidation into a parent corporation, the parent corporation shall be treated as the employer to whom this section applies.

(3) If an employer ceases to exist by reason of a merger, consolidation, or division, the successor corporation or corporations shall be treated as the employer to whom this section applies.

(e) Cessation of operations at one facility

If an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment, the employer shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 1363, 1364, and 1365 of this title shall apply.

(Pub. L. 93-406, title IV, § 4062, Sept. 2, 1974, 88 Stat. 1029.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(1)(A), in the original read "this title" meaning title IV of Pub. L. 93-406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

The Bankruptcy Act, referred to in subsec. (c)(2), is classified generally to Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1342, 1363, 1364, 1367, 1368 of this title; title 26 section 404.

§ 1363. Liability of substantial employer for withdrawal

(a) Plans under which more than one employer makes contributions

Except as provided in subsection (d) of this section, the plan administrator of a plan under which more than one employer makes contributions—

(1) shall notify the corporation of the withdrawal of a substantial employer from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of such employer under this subtitle with respect to such withdrawal.

The corporation shall, as soon as practicable thereafter, determine whether such employer is liable for any amount under this subtitle with respect to the withdrawal and notify such employer of such liability.

(b) Computation of liability

Except as provided in subsection (c) of this section, an employer who withdraws from a plan to which section 1321 of this title applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a) of this section, shall be liable to the corporation in accordance with the provisions of section 1362 of this title and this section. The amount of such employer's liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 1362 of this title for the entire plan, as if the plan had been terminated by the corporation on the date of the employer's withdrawal, multiplied by a fraction—

(1) the numerator of which is the total amount required to be contributed to the plan by such employer for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount required to be contributed to the plan by all employers for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions of paragraphs (2) and (3) of subsection (c) of this section.

(c) Bond in lieu of payment of liability; 5-year termination period

(1) In lieu of payment of his liability under this section the employer may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 6 through 13 of title 6. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated within the 5-year period commencing on the day of withdrawal, the liability of such employer is abated and any payment held in escrow shall be refunded without interest to the employer (or his bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the employer which is not required to meet any obligation of the corporation with respect to the plan.

(d) Alternate appropriate procedure

The provisions of this subsection apply in the case of a withdrawal described in subsection (a) of this section, and the provisions of subsections (b) and (c) of this section shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 1364 of this title and is more appropriate in the particular case. Upon a showing by the plan administrator of a plan that the withdrawal from the plan by any employer or employers has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan by employers, the corporation may—

(1) require the plan fund to be equitable allocated between those participants no longer working in covered service under the plan as a result of their employer's withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a termination; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) Indemnity agreement

The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section to any employer or plan administrator whenever it determines that there is an indemnity agreement in effect among all other employers under the plan which is adequate to satisfy the purposes of this section and of section 1364 of this title.

(Pub. L. 93-406, title IV, § 4063, Sept. 2, 1974, 88 Stat. 1030.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1342, 1362, 1365, 1367, 1368 of this title; title 26 section 404.

§ 1364. Liability of employers on termination of plan maintained by more than one employer

(a) This section applies to all employers who maintain a plan under which more than one employer makes contributions at the time such plan is terminated, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan.

(b) The corporation shall determine the liability of each such employer in a manner consistent with section 1362 of this title except that the amount of the liability determined under section 1362(b)(1) of this title with respect to the entire plan shall be allocated to each employer by multiplying such amounts by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan by each employer for the last 5 plan years ending prior to the termination, and

(2) the denominator of which is the total amount required to be contributed to the plan by all such employers for such last 5 years,

and the limitation described in section 1362(b)(2) of this title shall be applied separately to each employer. The corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations.

(Pub. L. 93-406, title IV, § 4064, Sept. 2, 1974, 88 Stat. 1031.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1342, 1362, 1363, 1367, 1368 of this title; title 26 section 404.

§ 1365. Annual report of plan administrator

For each plan year for which section 1321 of this title applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

(1) a copy of each notification required under section 1363 of this title with respect to such year, and

(2) a statement disclosing whether any reportable event (described in section 1343(b) of this title) occurred during the plan year.

The report shall be filed within 6 months after the close of the plan year to which it relates. The corporation shall cooperate with the Secretary of the Treasury and the Secretary of Labor in an endeavor to coordinate the timing and content, and possibly obtain the combination, of reports under this section with reports required to be made by plan administrators to such Secretaries.

(Pub. L. 93-406, title IV, § 4065, Sept. 2, 1974, 88 Stat. 1032.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1362 of this title.

§ 1366. Annual notification to substantial employers

The plan administrator of each plan under which contributions are made by more than one employer shall notify, within 6 months after the close of each plan year, any employer making contributions under that plan who is described in section 1301(a)(2) of this title that he is a substantial employer for that year.

(Pub. L. 93-406, title IV, § 4066, Sept. 2, 1974, 88 Stat. 1032.)

§ 1367. Recovery of employer liability for plan termination

The corporation is authorized to make arrangements with employers who are liable under section 1362, 1363, or 1364 of this title for payment of their liability, including arrangements for deferred payment on such terms and for such periods as the corporation deems equitable and appropriate.

(Pub. L. 93-406, title IV, § 4067, Sept. 2, 1974, 88 Stat. 1032.)

§ 1368. Lien for liability of employer

(a) Creation of lien

If any employer or employers liable to the corporation under section 1362, 1363, or 1364 of this title neglect or refuse to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation upon all property and rights to property, whether real or personal, belonging to such employer or employers.

(b) Term of lien

The lien imposed by subsection (a) of this section arises on the date of termination of a plan, and continues until the liability imposed under section 1362, 1363, or 1364 of this title is satisfied or becomes unenforceable by reason of lapse of time.

(c) Priority

(1) Except as otherwise provided under this section, the priority of the lien imposed under subsection (a) of this section shall be determined in the same manner as under section 6323 of title 26. Such section 6323 shall be applied by substituting "lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974" for "lien imposed by section 6321"; "corporation" for "Secretary or his dele-

gate"; "employer liability lien" for "tax lien"; "employer" for "taxpayer"; "lien arising under section 4068(a) of the Employee Retirement Income Security Act of 1974" for "assessment of the tax"; and "payment of the loan value is made to the corporation" for "satisfaction of a levy pursuant to section 6332(b)"; each place such terms appear.

(2) In the case of bankruptcy or insolvency proceedings, the lien imposed under subsection (a) of this section shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act [11 U.S.C. 1 et seq.] or section 191 of title 31.

(3) For purposes of applying section 6323(a) of title 26 to determine the priority between the lien imposed under subsection (a) of this section and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) of this section shall be filed in the same manner as under section 6323(f) and (g) of title 26.

(d) Civil action; limitation period

(1) In any case where there has been a refusal or neglect to pay the liability imposed under section 1362, 1363, or 1364 of this title, the corporation may bring civil action in a district court of the United States to enforce the lien of the corporation under this section with respect to such liability or to subject any property, of whatever nature, of the employer, or in which he has any right, title, or interest to the payment of such liability.

(2) The liability imposed by section 1362, 1363, or 1364 of this title may be collected by a proceeding in court if the proceeding is commenced within 6 years after the date upon which the plan was terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the employer before the expiration of such 6-year period. The period of limitations provided under this paragraph shall be suspended for the period the assets of the employer are in the control or custody of any court of the United States, or of any State, or of the District of Columbia, and for 6 months thereafter, and for any period during which the employer is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) Release or subordination

If the corporation determines, with the consent of the board of directors, that release of the lien or subordination of the lien to any other creditor of the employer or employers would not adversely affect the collection of the liability imposed under section 1362, 1363, or 1364 of this title, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such release or subordination, and that the ultimate collection of the liability will be facilitated by such release or subordination, the corporation may issue a certificate of release or subordination of the lien with respect to such property, or any part thereof.

(Pub. L. 93-406, title IV, § 4068, Sept. 2, 1974, 88 Stat. 1032.)

REFERENCES IN TEXT

Section 4068 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(1), is section 4068 of Pub. L. 93-406, title IV, Sept. 2, 1974, 88 Stat. 1032, which is classified to this section.

The Bankruptcy Act, referred to in subsec. (c)(2), is classified generally to Title 11, Bankruptcy.

SUBTITLE E—EFFECTIVE DATE; SPECIAL RULES

§ 1381. Effective date; special rules

(a) The provisions of this subchapter take effect on September 2, 1974.

(b) Notwithstanding the provisions of subsection (a) of this section, the corporation shall pay benefits guaranteed under this subchapter with respect to any plan—

(1) which is not a multiemployer plan,

(2) which terminates after June 30, 1974, and before September 2, 1974,

(3) to which section 1321 of this title would apply if that section were effective beginning on July 1, 1974, and

(4) with respect to which a notice is filed with the Secretary of Labor and received by him not later than 10 days after September 2, 1974, except that, for reasonable cause shown, such notice may be filed with the Secretary of Labor and received by him not later than October 31, 1974, stating that the plan is a plan described in paragraphs (1), (2), and (3).

The corporation shall not pay benefits guaranteed under this subchapter with respect to a plan described in the preceding sentence unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter or for the purpose of avoiding the liability which might be imposed under subtitle D of this subchapter if the plan terminated on or after September 2, 1974. The provisions of subtitle D of this subchapter do not apply in the case of such a plan which terminates before September 2, 1974. For purposes of determining whether a plan is a plan described in paragraph (2), the provisions of section 1348 of this title shall not apply, but the corporation shall make the determination on the basis of the date on which benefits ceased to accrue or on any other reasonable basis consistent with the purposes of this subsection.

(c)(1) Except as provided in paragraphs (2), (3), and (4), the corporation shall not pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates before January 1, 1978. Whenever the corporation exercises the authority granted under paragraph (2) or (3), the corporation shall notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Human Resources and the Committee on Finance of the Senate.

(2) The corporation may, in its discretion, pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates after September 2, 1974 and before January 1, 1978, if—

(A) the plan was maintained during the 60 months immediately preceding the date on which the plan terminates, and

(B) the corporation determines that the payment by the corporation of benefits guaranteed under this subchapter with respect to that plan will not jeopardize the payments the corporation anticipates it may be required to make in connection with benefits guaranteed under this subchapter with respect to multiemployer plans which terminate after December 31, 1977.

(3) Notwithstanding any provision of section 1321 or 1322 of this title which would prevent such payments, the corporation, in carrying out its authority under paragraph (2), may pay benefits guaranteed under this subchapter with respect to a multiemployer plan described in paragraph (2) in any case in which those benefits would otherwise not be payable if—

(A) the plan has been in effect for at least 5 years,

(B) the plan has been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding 5 years, and

(C) the participating employers and employee organization or organizations had no reasonable recourse other than termination.

(4) If the corporation determines, under paragraph (2) or (3), that it will pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates before January 1, 1978, the corporation—

(A) may establish requirements for the continuation of payments which commenced before January 2, 1974, with respect to retired participants under the plan,

(B) may not, notwithstanding any other provision of this subchapter, make payments with respect to any participant under such a plan who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to such participant on that date,

(C) may not make any payments with respect to benefits guaranteed under this subchapter in connection with such a plan which are derived, directly or indirectly, from amounts borrowed under section 1305(c) of this title, and

(D) shall review from time to time payments made under the authority granted to it by paragraphs (2) and (3), and reduce or terminate such payments to the extent necessary to avoid jeopardizing the ability of the corporation to make payments of benefits guaranteed under this subchapter in connection with multiemployer plans which terminate after December 31, 1977, without increasing premium rates for such plans.

(Pub. L. 93–406, title IV, § 4082, Sept. 2, 1974, 88 Stat. 1034; S. Res. 4, Feb. 4, 1977.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title" meaning title IV of Pub. L. 93–406, which enacted this subchapter and amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance.

CHANGE OF NAME

The Committee on Labor and Public Welfare of the Senate was abolished and replaced by the Committee on Human Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.